

**IC 23-2**

**ARTICLE 2. SECURITIES AND FRANCHISES**

**IC 23-2-1**

**Chapter 1. Securities Regulation**

**IC 23-2-1-1**

**Definitions**

23-2-1-1 Sec. 1. As used in this chapter, unless the context otherwise requires:

(a) "Commissioner" means the securities commissioner provided for in section 15(a) of this chapter.

(b) "Agent" means an individual, other than a broker-dealer, who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. A partner, officer, or director of a broker-dealer or issuer or a person occupying a similar status or performing similar functions is an agent only if the person effects or attempts to effect a purchase or sale of securities in Indiana. "Agent" does not include an individual who represents an issuer in:

(1) effecting transactions in a security exempted by section 2(a)(1), 2(a)(2), 2(a)(3), 2(a)(6), 2(a)(7), or 2(a)(10) of this chapter;

(2) effecting transactions exempted by section 2(b) of this chapter;

(3) effecting transactions with existing employees, partners, or directors of the issuer, if no commission or other remuneration is paid or given directly or indirectly for soliciting a person in Indiana; or

(4) effecting transactions in Indiana limited to those transactions described in Section 15(h)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78o).

(c) "Broker-dealer" means a person engaged in the business of effecting offers, sales, or purchases of securities for the account of others or for the person's own account. "Broker-dealer" does not include:

(1) an agent;

(2) an issuer with respect to the offer or sale of the issuer's own securities;

(3) a bank, savings institution, or trust company; or

(4) a person who has no place of business in Indiana if the person effects transactions in Indiana exclusively with:

(i) the issuers of the securities involved in the transactions;

(ii) other broker-dealers; or

(iii) banks, savings institutions, trust companies, insurance companies, investment companies (as defined in the Investment Company Act of 1940, as in effect on December 31, 1990), pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, whether or not the offeror or any

of the offerees is then present in Indiana.

(d) "Fraud", "fraudulent", "deceit", and "defraud" mean a misrepresentation of a material fact, a promise or representation or prediction not made honestly or in good faith, or the failure to disclose a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. This definition does not limit or diminish the full meaning of those terms as applied by or defined in courts of law or equity. These terms are not limited to common law deceit.

(e) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(f) "Issuer" means a person who issues or proposes to issue a security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or person performing similar functions or of the fixed, restricted management, or unit type. The term "issuer" means the person or persons performing the acts and assuming the duties of depository or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(g) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(h) "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(i)(1) "Sale" or "sell" means a contract of sale of, contract to sell, or disposition of, a security, or interest in a security for value.

(2) "Offer" or "offer to sell" means an attempt or offer to dispose of, or solicitation of an offer to purchase, a security, or interest in a security for value.

(3) "Transaction" and "transactions" include the meanings of "sale", "sell", "offer", "offer to sell", and "purchase".

(4) "Purchase" means an acquisition, direct or indirect, of a security or an interest in a security for value.

(5) A security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value.

(6) A purported gift of assessable stock is considered to involve an offer and sale.

(7) A sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as a sale or offer of a security that gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(8) The terms defined in this subsection do not include:

(i) a bona fide secured transaction in or loan of outstanding

securities;

(ii) a stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by the stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock; or

(iii) an act incident to a judicially approved reorganization in which a security is issued in exchange for one (1) or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash.

(j) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", and "Investment Company Act of 1940" mean the federal statutes of those names, as in effect on December 31, 1990.

(k) "Security" means a note, stock, treasury stock, bond, debenture, evidence of indebtedness, an interest in a limited liability company or limited liability partnership and any class or series of an interest in a limited liability company or limited liability partnership (including any fractional or other interest in an interest in a limited liability company or limited liability partnership), certificate of interest or participation in a profit-sharing agreement, commodity futures contract, option, put, call, privilege, or other right to purchase or sell a commodity futures contract, margin accounts for the purchase of commodities or commodity futures contracts, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, viatical settlement contract, any fractional or pooled interest in a viatical settlement contract, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under the title or lease, an automatic extension or rollover of an existing security, or, in general, an interest or instrument commonly known as a "security", or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant, option, or right to subscribe to or purchase, any of the foregoing. "Security" does not include:

(1) an insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period;

(2) a contract or trust agreement under which money is paid pursuant to a charitable remainder annuity trust or a charitable remainder unitrust (described in Section 664 of the Internal Revenue Code), or a pooled income fund (described in Section 642(c)(5) of the Internal Revenue Code) or an annuity contract under which the purchaser receives a charitable contribution deduction under Section 170 of the Internal Revenue Code; or

(3) an interest in a limited liability company or limited liability partnership if the person claiming that the interest is not a

security can prove that all of the members of the limited liability company or limited liability partnership are actively engaged in the management of the limited liability company or limited liability partnership.

(l) "State" means a state, territory, or possession of the United States, the District of Columbia, and Puerto Rico.

(m) Corporations are "affiliated" during a period of time when either is the owner of shares of the other representing and possessing fifty percent (50%) or more of the total combined voting power of all classes of stock issued by the other corporation and then outstanding and entitled to vote.

(n) "Investment adviser" means a person who holds himself out to be an investment adviser, or who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues and promulgates analyses or reports concerning securities. "Investment adviser" does not include any of the following:

(1) A bank, savings institution, or trust company.

(2) A lawyer, an accountant, an engineer, or a teacher whose performance of these services is solely incidental to the practice of the person's profession.

(3) A broker-dealer or its agent whose performance of these services is solely incidental to the conduct of the broker-dealer's business as a broker-dealer and who receives no special compensation for them.

(4) A publisher of a bona fide newspaper, news column, newsletter, news magazine, or business or financial publication or service, by whatever means communicated, that does not render advice on the specific investment situation of individual clients.

(5) An investment adviser representative.

(6) A person who is an investment adviser to an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

(7) A person who is registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3).

(8) A person who is excluded from the definition of investment adviser under Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2).

(9) Other persons the commissioner may by rule or order designate.

(o) "Transferable share" means a security representing an equity interest in a corporation or business trust, but does not include the shares of open-end investment companies (as defined by the Investment Company Act of 1940, as in effect on December 31, 1990).

(p) A "qualified transfer agent" means:

- (1) a bank whose deposits are insured by the Bank Insurance Fund of the Federal Deposit Insurance Corporation; or
- (2) a person, independent of the issuer, approved by the commissioner by regulation or by individual order in specific cases.

(q) "Investment adviser representative" means a person, except a person in a clerical or ministerial position:

- (1) who is employed by or associated with an investment adviser registered under this chapter; or
- (2) who has a place of business located in Indiana and is employed by or associated with a person required to be registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3); and
- (3) who:
  - (A) makes recommendations or otherwise renders advice regarding securities;
  - (B) manages accounts or portfolios of clients;
  - (C) determines recommendations or advice that should be given regarding securities;
  - (D) solicits, offers, or negotiates the sale of or sells investment advisory services; or
  - (E) supervises employees who perform a duty described in this subsection.

(r) "Accredited investor" means a person who is within any of the following categories, or who the issuer reasonably believes is within any of the following categories, at the time of the sale of securities to the person:

- (1) A person who meets the definition of "accredited investor" (as defined under the Securities Act of 1933 in 17 CFR 230.215), and in any other rule or regulation modifying the definition adopted by the Securities and Exchange Commission as in effect on December 31, 1990.
- (2) A person to whom an offer or sale may be made without registration pursuant to section 2(b)(8) or 2(b)(9) of this chapter.
- (3) Any other person the commissioner may designate by rule or order.

(s) "Federal covered security" refers to a security described as a covered security in Section 18(b) of the Securities Act of 1933 (15 U.S.C. 77r).

(t) "Viatical settlement contract" means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of a portion of a death benefit or ownership of a life insurance policy or contract for consideration that is less than the expected death benefit of the life insurance policy or contract. The term does not include the following:

- (1) A loan by an insurer under the terms of a life insurance policy, including a loan secured by the cash value of a policy.
- (2) An agreement with a bank, savings bank, savings and loan association, credit union, or other licensed lending institution

that takes an assignment of a life insurance policy as collateral for a loan.

(3) The provision of accelerated death benefits by an insurer to an insured under the provisions of a life insurance contract.

(4) Agreements between an insurer and a reinsurer.

(5) An agreement by a person who enters into not more than one (1) such agreement in any five (5) year period to purchase a life insurance policy or contract for the transfer of a life insurance policy for a value that is less than the expected death benefit.

*(Formerly: Acts 1961, c.333, s.101; Acts 1975, P.L.261, SEC.1.) As amended by Acts 1977, P.L.2, SEC.75; Acts 1977, P.L.268, SEC.1; Acts 1980, P.L.154, SEC.2; Acts 1981, P.L.214, SEC.2; P.L.240-1983, SEC.1; P.L.232-1985, SEC.1; P.L.228-1989, SEC.1; P.L.75-1990, SEC.4; P.L.8-1991, SEC.6; P.L.177-1991, SEC.1; P.L.8-1993, SEC.308; P.L.119-1994, SEC.1; P.L.11-1996, SEC.13; P.L.169-1997, SEC.1; P.L.128-2000, SEC.1.*

## **IC 23-2-1-2**

### **Exempt securities; exempt transactions**

23-2-1-2 Sec. 2. (a) The following securities are exempted from the registration requirements of section 3 of this chapter:

(1) A security (including a revenue obligation) issued or guaranteed by the United States, a state, a political subdivision of a state, or an agency or corporate or other instrumentality of one (1) or more of the foregoing or a certificate of deposit for any of the foregoing.

(2) A security issued or guaranteed by Canada, a Canadian province, a political subdivision of a Canadian province, an agency, or corporate or other instrumentality of one (1) or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor.

(3) A security issued by and representing an interest in or a debt of, or guaranteed by a bank organized under the laws of the United States, a bank, savings institution, or trust company organized and supervised under the laws of a state, a federal savings association, a savings association organized under the laws of a state and authorized to do business in Indiana, a federal credit union or a credit union, industrial loan association, or similar association organized and supervised under the laws of this state, or a corporation or organization whose issuance of securities is required by any other law to be passed upon and authorized by the department of financial institutions or by a federal agency or authority.

(4) A security issued or guaranteed by a railroad or other common or contract carrier, a public utility, or a common or contract carrier or public utility holding company. However, an issuer or guarantor must be subject to regulation or supervision

as to the issuance of its own securities by a public commission, board, or officer of the government of the United States, of a state, territory, or insular possession of the United States, of a municipality located in a state, territory, or insular possession, of the District of Columbia, or of the Dominion of Canada or a province of Canada.

(5) A security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Chicago Stock Exchange, or on any other exchange approved and designated by the commissioner, any other security of the same issuer that is of senior rank or substantially equal rank, a security called for by subscription rights or warrants so listed or approved, or a warrant or right to purchase or subscribe to any of the foregoing.

(6) A promissory note, draft, bill of exchange, or banker's acceptance that is evidence of:

- (A) an obligation;
- (B) a guarantee of an obligation;
- (C) a renewal of an obligation; or
- (D) a guarantee of a renewal of an obligation;

to pay cash within nine (9) months after the date of issuance, excluding grace days, that is issued in denominations of at least fifty thousand dollars (\$50,000) and receives a rating in one (1) of the three (3) highest rating categories from a nationally recognized statistical rating organization.

(7) A security issued in connection with an employee stock purchase, savings, pension, profit-sharing, or similar benefit plan.

(8) A security issued by an association incorporated under IC 15-7-1.

(9) A security that is an industrial development bond (as defined in Section 103(b)(2) of the Internal Revenue Code of 1954) the interest of which is excludable from gross income under Section 103(a)(1) of the Internal Revenue Code of 1954 if, by reason of the application of paragraph (4) or (6) of Section 103(b) of the Internal Revenue Code of 1954 (determined as if paragraphs (4)(A), (5), and (7) were not included in Section 103(b)), paragraph (1) of Section 103(b) does not apply to the security.

(10) A security issued by a nonprofit corporation that meets the requirements of Section 103(e) of the Internal Revenue Code of 1954 and is designated by the governor as the secondary market for guaranteed student loans under IC 20-12-21.2.

(11) A security designated or approved for designation upon notice of issuance on the National Association of Securities Dealers Automatic Quotation National Market System or any other national market system approved and designated by the commissioner, any other security of the same issuer that is of senior rank or substantially equal rank, a security called for by subscription rights or warrants so listed or approved, or a

warrant or right to purchase or subscribe to any of the foregoing.

(12) A security that is a "qualified bond" (as defined in Section 141(e) of the Internal Revenue Code, as amended).

(b) The following transactions are exempted from the registration requirements of section 3 of this chapter:

(1) An isolated nonissuer offer or sale, whether effected through a broker-dealer or not.

(2) A nonissuer sale effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy.

(3) A nonissuer offer or sale by a registered broker-dealer, acting either as principal or agent, of issued and outstanding securities if the following conditions are satisfied:

(A) The securities are sold at prices reasonably related to the current market price at the time of sale, and if the registered broker-dealer is acting as agent, the commission collected by the registered broker-dealer on account of the sale is not in excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics.

(B) The securities do not constitute an unsold allotment to or subscription by the broker-dealer as a participant in the distribution of the securities by the issuer or by or through an underwriter.

(C) Either:

(i) information consisting of the names of the issuer's officers and directors, a balance sheet of the issuer as of a date not more than eighteen (18) months prior to the date of the sale, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations is published in a securities manual approved by the commissioner;

(ii) the issuer is required to file reports with the Securities and Exchange Commission pursuant to sections 13 and 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78m and 78o) and is not delinquent in the filing of the reports on the date of the sale; or

(iii) information consisting of the names of the issuer's officers and directors, a balance sheet of the issuer as of a date not more than sixteen (16) months prior to the date of the sale, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations is on file with the commissioner. The information required by this item to be on file with the commissioner must be on a form and made in a manner as the commissioner prescribes. The fee for the initial filing of the form shall be twenty-five dollars (\$25). The fee for the annual renewal filing shall be fifteen dollars (\$15). When a filing is withdrawn or is not completed by the issuer, the commissioner must retain the filing fee.



(D) There has been compliance with section 6(l) of this chapter.

(E) Unless the issuer is registered under the Investment Company Act of 1940, all the following must be true at the time of the transaction:

(i) The security belongs to a class that has been in the hands of the public for at least ninety (90) days.

(ii) The issuer of the security is a going concern, is actually engaged in business, and is not in bankruptcy or receivership.

(iii) Except as permitted by order of the commissioner, the issuer and any predecessors have been in continuous operation for at least five (5) years. An issuer or predecessor is in continuous operation only if the issuer or predecessor has gross operating revenue in each of the five (5) years immediately preceding the issuer's or predecessor's claim of exemption and has had total gross operating revenue of at least two million five hundred thousand dollars (\$2,500,000) for those five (5) years or has had gross operating revenue of at least five hundred thousand dollars (\$500,000) in not less than three (3) of those five (5) years.

The commissioner may revoke the exemption afforded by this subdivision with respect to any securities by issuing an order:

(i) if the commissioner finds that the further sale of the securities in this state would work or tend to work a fraud on purchasers of the securities;

(ii) if the commissioner finds that the financial condition of the issuer is such that it is in the public interest and is necessary for the protection of investors to revoke or restrict the exemption afforded by this subsection; or

(iii) if the commissioner finds that, due to the limited number of shares in the hands of the public or due to the limited number of broker-dealers making a market in the securities, there is not a sufficient market for the securities so that there is not a current market price for the securities.

(4) A transaction between the issuer or other person on whose behalf the offering is made by an underwriter, or among underwriters.

(5) A transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness, is offered and sold as a unit.

(6) A transaction by an executor, administrator, personal representative, sheriff, marshal, receiver, trustee in bankruptcy, guardian, conservator, or a person acting in a trust or fiduciary capacity where the transaction is effected pursuant to the authority of or subject to approval by a court of competent

jurisdiction.

(7) A transaction executed by a bona fide pledgee without any purpose of evading this chapter.

(8) An offer or sale to a bank, a savings institution, a trust company, an insurance company, an investment company (as defined in the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-52)), a pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in a fiduciary capacity.

(9) The offer or sale of securities of an issuer:

(i) to a person who is:

(A) a director, an executive officer, a general partner, an administrator, or a person who performs similar functions for or who is similarly situated with respect to the issuer;

(B) a director, an executive officer, or a general partner of a general partner of the issuer; or

(C) any other natural person employed on a full-time basis by the issuer as an attorney or accountant if the person has been acting in this capacity for at least one (1) year immediately prior to the offer or sale;

(ii) to an entity affiliated with the issuer;

(iii) if the issuer is a corporation, to a person who is the owner of shares of the corporation or of an affiliated corporation representing and possessing ten percent (10%) or more of the total combined voting power of all classes of stock (of the corporation or affiliated corporation) issued and outstanding and who is entitled to vote; or

(iv) if the issuer is a limited liability company, to a person who is the owner of an interest in the limited liability company representing and possessing at least ten percent (10%) of the total combined voting power of all classes of such interests (of the limited liability company or affiliated limited liability company) issued and outstanding.

(10) The offer or sale of a security by the issuer of the security if all of the following conditions are satisfied:

(A) The issuer reasonably believes that either:

(i) there are no more than thirty-five (35) purchasers of the securities from the issuer in an offering pursuant to this subsection, including purchasers outside Indiana; or

(ii) there are no more than twenty (20) purchasers in Indiana.

In either case, there shall be excluded in determining the number of purchasers a purchaser whom the issuer reasonably believes to be an accredited investor or who purchases the securities after they are registered under this chapter.

(B) The issuer does not offer or sell the securities by means of a form of general advertisement or general solicitation.

(C) The issuer reasonably believes that each purchaser of the

securities is acquiring the securities for the purchaser's own investment and is aware of any restrictions imposed on transferability and resale of the securities. The basis for reasonable belief may include:

- (i) obtaining a written representation signed by the purchaser that the purchaser is acquiring the securities for the purchaser's own investment and is aware of any restrictions imposed on the transferability and resale of the securities; and
- (ii) placement of a legend on the certificate or other document that evidences the securities stating that the securities have not been registered under section 3 of this chapter, and setting forth or referring to the restrictions on transferability and sale of the securities.

(D) The issuer:

- (i) files with the commissioner and provides to each purchaser in this state an offering statement that sets forth all material facts with respect to the securities; and
- (ii) reasonably believes immediately before making a sale that each purchaser who is not an accredited investor either alone or with a purchaser representative has knowledge and experience in financial and business matters to the extent that the purchaser is capable of evaluating the merits and risks of the prospective investment.

(E) If the aggregate offering price of the securities in an offering pursuant to this subdivision (including securities sold outside of Indiana) does not exceed five hundred thousand dollars (\$500,000), the issuer is not required to comply with clause (D) if the issuer files with the commissioner and provides to each purchaser in Indiana the following information and materials:

- (i) copies of all written materials, if any, concerning the securities that have been provided by the issuer to any purchaser; and
- (ii) unless clearly presented in all written materials, a written notification setting forth the name, address, and form of organization of the issuer and any affiliate, the nature of the principal businesses of the issuer and any affiliate, and the information required in section 5(b)(1)(B), 5(b)(1)(C), 5(b)(1)(D), 5(b)(1)(E), 5(b)(1)(H), and 5(b)(1)(I) of this chapter.

(F) The commissioner does not disallow the exemption provided by this subdivision within ten (10) full business days after receipt of the filing required by clause (D) or (E). The issuer may make offers (but not sales) before and during the ten (10) day period, if:

- (i) each prospective purchaser is advised in writing that the offer is preliminary and subject to material change; and
- (ii) no enforceable offer to purchase the securities may be

made by a prospective purchaser, and no consideration in any form may be accepted or received (directly or indirectly) from a prospective purchaser, before the expiration of the ten (10) day period and the vacation of an order disallowing the exemption.

(G) The issuer need not comply with clause (D), (E), or (F) if:

(i) each purchaser has access to all the material facts with respect to the securities by reason of the purchaser's active involvement in the organization or management of the issuer or the purchaser's family relationship with a person actively involved in the organization or management of the issuer;

(ii) there are not more than fifteen (15) purchasers in Indiana and each Indiana purchaser is an accredited investor or is a purchaser described in item (i); or

(iii) the aggregate offering price of the securities, including securities sold outside Indiana, does not exceed five hundred thousand dollars (\$500,000), the total number of purchasers, including purchasers outside of Indiana, does not exceed twenty-five (25) and each purchaser either receives all of the material facts with respect to the security or is an accredited investor or a purchaser described in item (i).

(H) If the issuer makes or is required to make a filing with the commissioner under clause (D) or (E), the issuer must also file with the commissioner at the time of the filing the consent to service of process required by section 16 of this chapter. The issuer shall also file with the commissioner, at the times and in the forms as the commissioner may prescribe, notices of sales made in reliance upon this subdivision.

(I) The commissioner may by rule deny exemption provided in this subdivision to a particular class of issuers, or may make the exemption available to the issuers upon compliance with additional conditions and requirements, if appropriate in furtherance of the intent of this chapter.

(11) An offer or sale of securities to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety (90) days of their issuance if no commission or other remuneration (other than a standby commission) is paid or given for soliciting a security holder in this state.

(12) An offer (but not a sale) of a security for which registration statements or applications have been filed under this chapter and the Securities Act of 1933 (15 U.S.C. 77a-77aa), if no stop order or refusal order is in effect and no public proceeding or examination looking toward an order is pending under either law.

(13) The deposit of shares under a voting-trust agreement and the issue of voting-trust certificates for the deposit.

(14) The offer or sale of a commodity futures contract.

(15) The offer or sale of securities to or for the benefit of security holders incident to a vote by the security holders pursuant to the articles of incorporation or applicable instrument, on a merger or share exchange under IC 23-1-40 or the laws of another state, reclassification of securities, exchange of securities under IC 28-1-7.5, or sale of assets of the issuer in consideration of the issuance of securities of the same or another issuer.

(16) A limited offering transactional exemption, which may be created by rule adopted by the commissioner. The exemption must further the objectives of compatibility with federal exemptions and uniformity among the states.

(c) The commissioner may consider and determine if a proposed sale, transaction, issue, or security is entitled to an exemption accorded by this section. The commissioner may decline to exercise the commissioner's authority as to a proposed sale, transaction, issue, or security. An interested party desiring the commissioner to exercise the commissioner's authority must submit to the commissioner a verified statement of all material facts relating to the proposed sale, transaction, issue, or security, which must be accompanied by a request for a ruling as to the particular exemption claimed, together with a filing fee of one hundred dollars (\$100). After notice to the interested parties as the commissioner determines is proper and after a hearing, if any, the commissioner may enter an order finding the proposed sale, transaction, issue, or security entitled or not entitled to the exemption claimed. An order entered, unless an appeal is taken from it in the manner prescribed in section 20 of this chapter, is binding upon the commissioner and upon all interested parties, provided that the proposed sale, transaction, issue, or security when consummated or issued conforms in every relevant and material particular with the facts as set forth in the verified statement submitted.

(d) The commissioner may by order deny or revoke an exemption specified in subsection (a)(6), (a)(7), or (b) with respect to a specific security or transaction, if the commissioner finds that the securities to which the exemption applies would not qualify for registration under sections 4 and 5 of this chapter. No order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the commissioner may by order summarily deny or revoke any of the specific exemptions pending final determination of a proceeding under this subsection. Upon the entry of a summary order, the commissioner shall promptly notify all interested parties that it has been entered, of the reasons for the order, and that within fifteen (15) days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is

modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated section 3 of this chapter by reason of an offer or sale effected after the entry of an order under this subsection if the person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the order.

(e) If, with respect to an offering of securities, any notices or written statements are required to be filed with the commissioner under subsection (b)(10), the first filing made with respect to the offering must be accompanied by a filing fee of one hundred dollars (\$100).

(f) A condition, stipulation, or provision requiring a person acquiring a security to waive compliance with this chapter or a rule or order under this chapter is void.

*(Formerly: Acts 1961, c.333, s.102; Acts 1967, c.255, s.1; Acts 1969, c.190, s.1; Acts 1975, P.L.261, SEC.2.) As amended by Acts 1980, P.L.154, SEC.3; Acts 1981, P.L.214, SEC.3; P.L.238-1983, SEC.2; P.L.240-1983, SEC.2; P.L.232-1985, SEC.2; P.L.2-1987, SEC.32; P.L.34-1987, SEC.280; P.L.228-1989, SEC.2; P.L.75-1990, SEC.5; P.L.177-1991, SEC.2; P.L.119-1994, SEC.2; P.L.169-1997, SEC.2; P.L.79-1998, SEC.19; P.L.73-2004, SEC.5.*

### **IC 23-2-1-3**

#### **Unlawful acts**

23-2-1-3 Sec. 3. It is unlawful for any person to offer or sell any security in Indiana unless:

- (1) it is registered under this chapter;
- (2) the security or transaction is exempted under section 2 of this chapter; or
- (3) it is a federal covered security.

*(Formerly: Acts 1961, c.333, s.201.) As amended by P.L.34-1987, SEC.281; P.L.169-1997, SEC.3.*

### **IC 23-2-1-4**

#### **Registration under Securities Act of 1933; registration by coordination; required information**

23-2-1-4 Sec. 4. (a) A security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination.

(b) An application for registration under this section shall be filed with the commission and shall contain the following information and be accompanied by the following documents, in addition to the information specified in section 6(e) of this chapter, and the consent to service of process required by section 16 of this chapter:

- (1) One (1) copy of the latest registration statement filed under the Securities Act of 1933 as of the date of filing under this section.

(2) If the commissioner, by rule or otherwise, requires a copy of the articles of incorporation and bylaws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of an indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security.

(3) If the commissioner requests, other information, or copies of other documents, filed under the Securities Act of 1933.

(4) An undertaking to forward all future amendments to the federal prospectus other than an amendment that merely delays the effective date of the registration promptly, and in any event not later than the first business day after the day they are forwarded to or filed with the Securities and Exchange Commission, whichever first occurs.

(c) An application for registration under this section automatically becomes effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied:

(1) No stop order is in effect and no proceeding is pending under section 7 of this chapter.

(2) The application for registration has been on file with the commissioner for at least ten (10) business days.

(3) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two (2) full business days or a shorter period as the commissioner permits by rule or otherwise and the offering is made within those limitations.

(4) The registrant promptly notifies the commissioner by telephone or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any.

(5) The registrant promptly files a posteffective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(d) Upon failure to receive the required notification and posteffective amendment with respect to the price amendment, the commissioner may enter a stop order, without notice or hearing, retroactively denying effectiveness to the application for registration or suspending its effectiveness until compliance with this subsection, if the commissioner promptly notifies the registrant by telephone or telegram (and promptly confirms by letter or telegram when the commissioner notifies by telephone) of the issuance of the order. If the registrant proves compliance with the requirements of this subsection as to notice and posteffective amendment, the stop order is void as of the time of its entry. The commissioner may by rule or otherwise waive either or both of the conditions specified in subsection (c)(2), (c)(3), (c)(4), and (c)(5). If the federal registration

statement becomes effective before all conditions in this subsection are satisfied and they are not waived, the application for registration automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the commissioner of the date when the federal registration statement is expected to become effective, the commissioner shall promptly advise the registrant by telephone or telegram at the registrant's expense, whether all the conditions are satisfied and whether the commissioner then contemplates the institution of a proceeding under section 7 of this chapter. The advice of the commissioner does not preclude the institution of a proceeding at any time.

*(Formerly: Acts 1961, c.333, s.203; Acts 1975, P.L.261, SEC.3.) As amended by P.L.228-1989, SEC.3; P.L.177-1991, SEC.3; P.L.119-1994, SEC.3; P.L.169-1997, SEC.4.*

### **IC 23-2-1-5**

#### **Registration by qualification; registration statement; required information; prospectus; annual report**

23-2-1-5 Sec. 5. (a) A security may be registered by qualification.

(b) A registration statement under this section shall be filed with the commissioner, shall contain the following information, and shall be accompanied by the following documents in addition to the information specified in section 6(e) of this chapter and the consent to service of process required by section 16 of this chapter:

(1) A copy of the prospectus or offering circular to be used as of the effective date in connection with the offering that must include the following:

(A) With respect to the issuer and a significant subsidiary of the issuer:

- (i) the issuer's name, address, and form of organization;
- (ii) the state or foreign jurisdiction and date of the issuer's organization;
- (iii) the general character and location of the issuer's business;
- (iv) a description of the issuer's physical properties and equipment; and
- (v) a statement of the general competitive conditions in the industry or business in which the issuer is or will be engaged.

(B) With respect to a director and officer of the issuer, or person occupying a similar status or performing similar functions:

- (i) the person's name, address, principal occupation, and personal and business history for the past ten (10) years;
- (ii) the amount of securities of the issuer held by the person as of a specified date within thirty (30) days of the filing of the registration statement;
- (iii) the amount of the securities covered by the registration statement to which the person has indicated the person's intention to subscribe; and



(iv) a description of a material interest in any material transaction with the issuer or an affiliated corporation effected within the past three (3) years or proposed to be effected.

(C) With respect to persons covered by clause (B), the remuneration paid during the past twelve (12) months and estimated to be paid during the next twelve (12) months, directly or indirectly, by the issuer (together with all predecessors, parents, subsidiaries, and affiliates of the issuer) to all the persons in the aggregate.

(D) With respect to a person owning of record or beneficially, if known, ten percent (10%) or more of the outstanding shares of a class of equity security of the issuer, the information specified in clause (B) other than the person's occupation.

(E) With respect to a promoter, if the issuer was organized within the past three (3) years, the information specified in clause (B), an amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for any payments.

(F) With respect to a person on whose behalf a part of the offering is to be made in a nonissuer distribution:

- (i) the person's name and address;
- (ii) the amount of securities of the issuer held by the person as of the date of the filing of the registration statement;
- (iii) a description of a material interest in a material transaction with the issuer or a significant subsidiary effected within the past three (3) years or proposed to be effected; and
- (iv) a statement of the person's reasons for making the offering.

(G) The capitalization and long term debt (on both a current and a pro forma basis) of the issuer and a significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill, or anything else) for which the issuer or a subsidiary has issued any of its securities within the past two (2) years or is obligated to issue any of its securities.

(H) The kind and amount of securities to be offered, the proposed offering price or the method by which it is to be computed, a variation from the price at which a proportion of the offering is to be made to a person or class of persons other than the underwriters, with a specification of the person or class, the basis upon which the offering is to be made if the basis is for something other than cash, the estimated aggregate underwriting and selling discounts or commissions and finders' fees (including separately cash,

securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering) or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts, the estimated amounts of other selling expenses, including legal, engineering, and accounting charges, the name and address of each underwriter and each recipient of a finder's fee, and a description of the plan of distribution of the securities to be offered.

(I) The estimated cash proceeds to be received by the issuer from the offering, the purposes for which the proceeds are to be used by the issuer, the amount to be used for each purpose, the order or priority in which the proceeds will be used for the purposes stated, the amounts of funds to be raised from other sources to achieve the purposes stated, the sources of the funds, and, if a part of the proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of persons who have received commissions in connection with the acquisition, the amounts of any commissions, and any other expense in connection with the acquisition (including the cost of borrowing money to finance the acquisition).

(J) A description of stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of the options held or to be held by a person required to be named in clause (B), (D), (E), (F), or (H) and by a person who holds or will hold ten percent (10%) or more in the aggregate of the options.

(K) The dates of, parties to, and general effect concisely stated of, a management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two (2) years, together with a copy of the contract and a description of any pending litigation or proceeding to which the issuer is a party and that materially affects the issuer's business or assets (including any litigation or proceeding known to be contemplated by government authorities).

(L) Condensed versions of the financial statements required under subdivision 6.

(M) The names of an accountant, engineer, appraiser, or other person who has prepared or certified a report or valuation used in connection with the offering.

(N) The name and address of counsel for the issuer, a nonissuer, and an underwriter.

(O) A statement on the front cover of the prospectus or offering circular in the size, type, and form, and located as the commissioner may by rule prescribe, to the effect that

the Indiana securities division has not in any way passed upon the merits or qualifications of, or recommended or given approval to, the securities offered, or passed upon the accuracy or adequacy of the prospectus or offering circular.

(P) Additional information the commissioner requires by rule or order so that the prospectus meets the requirements of sections 3 and 12 of this chapter.

(2) Copies of pamphlets, circulars, form letters, advertisements, or other sales literature intended to be used in connection with the offering.

(3) A specimen or copy of the security being registered, a copy of the issuer's articles of incorporation, if not already on file with the secretary of state, a copy of the issuer's bylaws as currently in effect, and a copy of an indenture or other instrument covering the security to be registered.

(4) A signed or conformed copy of an opinion of counsel as to the legality of the security being registered (with an English translation if it is in a foreign language), that shall state whether the security when sold will be legally issued, fully paid, and nonassessable, and, if a debt security, a binding obligation of the issuer.

(5) The written consent of an accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by the person, if the person is named as having prepared or certified a report or valuation (other than a public and official document or statement) that is used in connection with the registration statement.

(6) The following financial statements prepared in accordance with generally accepted accounting principles applied on a consistent basis shall be furnished:

(A) A balance sheet of the issuer as of the close of its last fiscal year, certified by an independent certified or public accountant or firm of accountants.

(B) Statements of income and changes in financial position for each of the last three (3) fiscal years or for the period of the issuer's and any predecessor's existence, if less than three (3) years, certified by an independent certified or public accountant or firm of accountants.

(C) An interim balance sheet as of the close of the last fiscal quarter ending forty-five (45) or more days prior to the date of filing, and statements of income and change in financial position for the period between the dates of the audited and interim balance sheets.

(D) If a part of the proceeds of the offering is to be applied to the purchase of a business, the same financial statements that would be required if that business were the registrant.

(7) A copy of an underwriting or selling group agreement under which the distribution is to be made, or the proposed form of the agreement whose terms have not yet been determined, and a description of the plan of distribution of securities that are to

be offered otherwise than through an underwriter.

(8) A copy of a management or other material contract made or to be made otherwise than in the ordinary course of business, if it is to be performed in whole or in part, at or after the filing of the registration statement or was made within the past two (2) years.

(9) Additional information as the commissioner requires by rule or order.

(c) Except as otherwise provided, the effective date of a registration statement under this section shall be the thirtieth day after the filing of the statement or an earlier date as the commissioner may determine, having due regard to the adequacy of the information respecting the issuer already available to the public, to the facility with which the nature of the securities to be registered, the security's relationship to the capital structure of the issuer, and the rights of holders of the securities can be understood, to the public interest, and to the protection of investors. If an amendment to a statement is filed before the effective date of the statement, the registration statement shall be considered to have been filed when the amendment was filed, except that an amendment filed with the consent of the commissioner before the effective date of the registration statement, or filed pursuant to an order of the commissioner, shall be treated as a part of the registration statement.

(d) The commissioner shall require as a condition of registration of a security under this section that an adequate prospectus be sent or given to each person to whom an offer is made or from whom an offer to buy is solicited before or concurrently with:

(1) the first written offer or the first written solicitation of an offer to buy made to the person (otherwise and by means of a public advertisement) by or for the account of the issuer or a person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by the underwriter or broker-dealer as a participant in the distribution;

(2) the confirmation of a sale made by or for the account of the person;

(3) payment pursuant to the sale; or

(4) delivery of the security pursuant to the sale;

whichever first occurs. The prospectus shall be adequate if it contains all of the information specified in subsection (b)(1). So long as an offering continues, the prospectus shall be revised and brought current by the filing of an amended prospectus at least once every twelve (12) months after the registration statement becomes effective and so long as the offering is not discontinued.

(e) The commissioner shall require, as a condition of registration by an issuer of securities under this section, that the issuer shall subsequently furnish, not less often than annually financial reports to the holders of the issuer's securities, containing information the commissioner shall require by rule or order, including with respect to an issuer that is a business trust or real estate investment trust,

information concerning transactions with an officer, director, person holding a similar position with the issuer, or any other affiliated person as defined by the commissioner, and information disclosing the source of distributions from capital made to the holders of its securities.

*(Formerly: Acts 1961, c.333, s.204; Acts 1967, c.255, s.3.) As amended by P.L.240-1983, SEC.3; P.L.228-1989, SEC.4; P.L.169-1997, SEC.5.*

#### **IC 23-2-1-5.5**

##### **Prospectus; Small Corporate Offerings Registration Form**

23-2-1-5.5 Sec. 5.5. (a) The prospectus required for registration by qualification under section 5 of this chapter may be satisfied by the Small Corporate Offerings Registration Form (Form U-7) adopted by the North American Securities Administrators Association if all the qualifications in the instructions for use of the form are fulfilled.

(b) The commissioner shall adopt rules, orders, and forms to implement this section.

*As added by P.L.177-1991, SEC.4.*

#### **IC 23-2-1-6**

##### **Application for registration; filing fee; contents; effective period; amendment; exemptions**

23-2-1-6 Sec. 6. (a) An application for registration may be filed by:

- (1) the issuer;
- (2) any other person on whose behalf the offering is to be made;
- or
- (3) a registered broker-dealer.

(b) A person filing an application for registration shall pay a filing fee of one-twentieth of one percent (0.05%) of the maximum aggregate offering price at which the registered securities are to be offered in Indiana, but the fee may not be less than two hundred fifty dollars (\$250) and may not be more than one thousand dollars (\$1,000).

(c) When an application for registration under subsection (b) is withdrawn before the effective date or a preeffective stop order is entered under section 7 of this chapter, the commissioner shall retain two hundred fifty dollars (\$250) of the fee.

(d) A person filing an amendment to an effective registration which requires an order of the commissioner shall pay a twenty-five dollar (\$25) filing fee.

(e) An application for registration shall specify:

- (1) the amount of securities to be offered in this state;
- (2) the states in which a registration statement or similar document in connection with the offering has been or is to be filed; and
- (3) an adverse order, judgment, or decree entered in connection with the offering by the regulatory authorities in each state or

by a court or the Securities and Exchange Commission.

(f) A document filed under this chapter within five (5) years preceding the filing of an application for registration may be incorporated by reference in the application for registration if the document is currently accurate.

(g) The commissioner may by rule or otherwise permit the omission of an item of information or document from an application for registration.

(h) In the case of a nonissuer distribution, any part of the information that might otherwise be required under section 5 of this chapter or subsection (i) need not be furnished if the person filing the application for registration produces evidence to the reasonable satisfaction of the commissioner that the person, or the persons on whose behalf the distribution is to be made, cannot furnish that part of the required information without unreasonable effort or expense.

(i) A registration is effective for:

(1) two (2) years from its effective date; or

(2) a shorter period during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or the person on whose behalf the offering is being made or by an underwriter or broker-dealer who is still offering part of an unsold allotment or subscription taken by the underwriter or broker-dealer as a participant in the distribution, except during the time a stop order is in effect under section 7 of this chapter.

(j) So long as a registration is effective, the commissioner may by rule or order require the person who filed the application for registration to file reports, not more often than quarterly, to keep reasonably current the information contained in the application for registration and to disclose the progress of the offering.

(k) The commissioner may by rule or order require as a condition of registration by qualification or coordination:

(1) that a security issued within the past three (3) years or to be issued to a promoter for a consideration substantially different from the public offering price, or to a person for a consideration other than cash, be deposited in escrow; and

(2) that the proceeds from the sale of the registered security be impounded until the issuer receives a specified amount.

The commissioner may by rule or order determine the conditions of an escrow or impounding required under this subsection, but the commissioner may not reject a depository solely because of location in another state.

(l) No transferable share is exempt from registration under section 2(b)(3) of this chapter or is qualified for registration under sections 4 or 5 of this chapter unless the issuer has designated a qualified transfer agent to handle all transfers. The commissioner may adopt rules to implement this subsection. The commissioner may by rule or order exempt an issuer, wholly or partially, from the requirements of this subsection.

(m) A registration statement may be amended after its effective

date to increase the securities specified to be offered and sold if the public offering price and underwriters' discounts and commissions are not changed from the amounts reported to the commissioner. An amendment becomes effective upon an order of the commissioner. A person filing an amendment must pay a late registration fee of twenty-five dollars (\$25) and a filing fee under subsection (b) for the additional securities proposed to be offered. An amendment relates back to the date of the sale of additional securities being registered if the amendment is filed within three (3) months after the date of the sale and the additional filing fee and late registration fee are paid.

(n) As permitted by Section 106(c) of the Secondary Mortgage Market Enhancement Act of 1984 (15 U.S.C. 77r-1(c)), securities that are offered and sold pursuant to Section 4(5) of the Securities Act of 1933 or that are mortgage-related securities (as that term is defined in Section 3(a)(41) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(41)):

(1) must comply with all applicable:

(A) registration and qualification requirements of this chapter; and

(B) rules adopted by the commissioner; and

(2) shall not be treated as obligations issued by the United States for the purposes of this chapter.

(o) If:

(1) the division:

(A) does not approve an application for registration by coordination or qualification; and

(B) notifies the applicant not later than ten (10) days after the date the application was not approved of a deficiency in the application that, if satisfied, would allow the approval of the application;

the applicant may satisfy the deficiency within sixty (60) days after the date described in clause (B); and

(2) an applicant does not satisfy the deficiency described in subdivision (1):

(A) the application is considered abandoned;

(B) the issuer does not receive a refund of the application fee; and

(C) no further action is required by the division.

*(Formerly: Acts 1961, c.333, s.205; Acts 1967, c.255, s.4; Acts 1975, P.L.261, SEC.4.) As amended by Acts 1979, P.L.234, SEC.5; Acts 1981, P.L.214, SEC.4; P.L.130-1984, SEC.7; P.L.228-1989, SEC.5; P.L.177-1991, SEC.5; P.L.169-1997, SEC.6; P.L.73-2004, SEC.6.*

#### **IC 23-2-1-6.1**

##### **Federal covered securities**

23-2-1-6.1 Sec. 6.1. (a) The commissioner, by rule or otherwise, may require the filing of the following or any combination of the following documents with respect to a federal covered security described in Section 18(b)(2) of the Securities Act of 1933 (15 U.S.C. 77r(b)(2)):

(1) Before the initial offer of the federal covered security in Indiana, all documents that are part of a current federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933 (15 U.S.C. 77a et seq.) and:

(A) a consent to service of process signed by the issuer; and

(B) a fee of:

(i) five hundred dollars (\$500) for an issuer with net assets not exceeding ten million dollars (\$10,000,000); or

(ii) one thousand dollars (\$1,000) for other issuers.

(2) After the initial offer of the federal covered security in Indiana, all documents that are part of an amendment to a current federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933 (15 U.S.C. 77a et seq.).

(3) An annual or periodic report of the value of federal covered securities offered or sold in Indiana and:

(A) a fee of two hundred fifty dollars (\$250); and

(B) a fee equal to five-hundredths of one percent (0.05%) of the excess of the dollar amount of securities sold during the fiscal year over the dollar amount of securities redeemed, not to exceed two thousand dollars (\$2,000) in any one (1) year. The fee required under subdivision (1) shall be applied as a credit against the fee required under this clause.

(b) With respect to a security that is a federal covered security described in Section 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. 77r(b)(4)(d)), the commissioner, by rule or otherwise, may require the issuer to file:

(1) a notice on Securities and Exchange Commission Form D (17 CFR 230.500); and

(2) a consent to service of process signed by the issuer;

not later than fifteen (15) days after the first sale of the federal covered security in Indiana.

(c) The commissioner, by rule or otherwise, may require the filing of any document filed with the Securities and Exchange Commission under the Securities Act of 1933 with respect to a federal covered security described in Section 18(b)(3) or 18(b)(4) of the Securities Act of 1933 (15 U.S.C. 77r(b)(3) or 77r(b)(4)).

(d) This section does not apply to a federal covered security described in Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. 77r(b)(1)). The commissioner may issue a stop order suspending the offer and sale of a federal covered security if the commissioner finds all of the following:

(1) The order is in the public interest.

(2) There is a failure to comply with a condition established under this section.

(e) The commissioner, by rule or otherwise, may waive any or all of the provisions of this section.

(f) Notwithstanding this section, until October 11, 1999, if the commissioner provides written notification to an issuer of a federal



covered security that fees under this section have not been paid or have been underpaid and the fees are not paid promptly after the notice, the commissioner may require the federal covered security to be registered. An issuer is considered to pay fees promptly if the fees are remitted with fifteen (15) days following the issuer's receipt of the written notice from the commissioner.

*As added by P.L.169-1997, SEC.7.*

#### **IC 23-2-1-7**

#### **Stop order, suspension, or revocation; postponement; modification of order**

23-2-1-7 Sec. 7. (a) The commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration if the commissioner finds that the order is in the public interest and that any of the following exist:

(1) The application for registration as of its effective date or as of an earlier date in the case of an order denying effectiveness, or an amendment under section 6(d) or 6(m) of this chapter as of its effective date, or a report under section 6(j) of this chapter is incomplete in a material respect or contains a statement that was, in the light of the circumstances under which it was made, false or misleading with respect to a material fact.

(2) This chapter or a rule, an order, or a condition lawfully imposed under this chapter has been violated, in connection with the offering, by:

(A) the person filing the application for registration;

(B) the issuer, a partner, an officer, or a director of the issuer, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling or controlled by the issuer, but only if the person filing the application for registration is directly or indirectly controlled by or acting for the issuer; or

(C) an underwriter.

(3) The security registered or sought to be registered is the subject of an administrative stop order or similar order or a permanent or temporary injunction of a court of competent jurisdiction entered under any other federal or state statute applicable to the offering, but:

(A) the commissioner may not institute a proceeding against an effective registration under this subdivision more than one (1) year from the date of the order or injunction relied on; and

(B) the commissioner may not enter an order under this subdivision on the basis of an order or injunction entered under any other law unless that order or injunction was based on facts that would currently constitute a ground for stop order under this section.

(4) The issuer's enterprise or method of business includes or would include activities that are illegal where performed.

(5) The offering has been or would be made with unreasonable

amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options.

(6) When a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by section 4(b)(4) of this chapter.

(7) The applicant or registrant has failed to pay the proper filing fee. The commissioner may enter only a denial order under this subdivision and the commissioner shall vacate the order when the deficiency has been corrected.

(8) The offering has worked or tended to work a fraud upon purchasers or would so operate.

The commissioner may not institute a stop order proceeding against an effective registration on the basis of a fact or transaction known to the commissioner when the registration became effective unless the proceeding is instituted within the next one hundred eighty (180) days.

(b) The commissioner may by order summarily postpone or suspend the effectiveness of the registration pending final determination of a proceeding under this section. Upon the entry of the order, the commissioner shall promptly notify each person specified in subsection (c) that:

- (1) the order has been entered and the reasons for the entry; and
- (2) upon receipt of a written request the matter will be set down for hearing to commence within fifteen (15) business days after receipt of the request unless the applicant consents to a later date.

If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to each person specified in subsection (c), may modify or vacate the order or extend it until final determination.

(c) No stop order may be entered under this section (except the first sentence of subsection (b)) without:

- (1) appropriate prior notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered;
- (2) opportunity for hearing; and
- (3) written findings of fact and conclusions of law.

(d) The commissioner may vacate or modify a stop order if the commissioner finds that the conditions that prompted entry have changed or that it is in the public interest to do so.

*(Formerly: Acts 1961, c.333, s.206; Acts 1967, c.255, s.5; Acts 1975, P.L.261, SEC.5.) As amended by P.L.34-1987, SEC.282; P.L.228-1989, SEC.6; P.L.113-1992, SEC.1; P.L.169-1997, SEC.8.*

## **IC 23-2-1-8**

**Broker-dealers; agents; investment advisers; investment adviser representatives; registration**

23-2-1-8 Sec. 8. (a) It is unlawful for a person to transact business in Indiana as a broker-dealer or agent unless the person is registered under this chapter.

(b) It is unlawful for a broker-dealer or issuer to employ an agent unless the agent is registered under this chapter. The registration of an agent is not effective during a period when the agent is not associated with a particular broker-dealer registered under this chapter or a particular issuer.

(c) It is unlawful for a person to transact business in Indiana as an investment adviser or an investment adviser representative unless:

(1) the person is registered under this chapter;

(2) the person's only clients in Indiana are investment companies (as defined in the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.)), other investment advisers, broker-dealers, banks, trust companies, savings institutions, insurance companies, employee benefit plans with assets of not less than one million dollars (\$1,000,000), and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or by order of the commissioner; or

(3) the person, during the preceding twelve (12) months, has had less than six (6) clients who are residents of Indiana.

(d) It is unlawful for an investment adviser who is required to be registered under this chapter to employ an investment adviser representative who is not registered under this chapter. The registration of an investment adviser representative is not effective when the investment adviser representative is not employed by an investment adviser registered under this chapter.

(e) It is a violation of this chapter for a person required to be registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3) to employ, supervise, or associate with an investment adviser representative having a place of business in Indiana, unless the investment adviser's representative is:

(1) registered; or

(2) exempt from registration;

under this chapter.

(f) The registration of a broker-dealer, an agent, an investment adviser, or an investment adviser representative expires December 31 of each year unless renewed.

(g) This subsection does not apply to an investment adviser whose only clients are those described in subsection (c)(3). It is a violation of this chapter for a person who is required to be registered under Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3) as an investment adviser to conduct advisory business in Indiana if:

(1) the commissioner requires by rule or otherwise that the person file with the commissioner:

(A) documents filed by the person with the Securities and

- Exchange Commission;
  - (B) a consent to service of process; or
  - (C) both clauses (A) and (B); and
- (2) the person fails to file the items required by the commissioner.

*(Formerly: Acts 1961, c.333, s.301; Acts 1967, c.255, s.13; Acts 1975, P.L.261, SEC.6.) As amended by Acts 1981, P.L.214, SEC.5; P.L.228-1989, SEC.7; P.L.75-1990, SEC.6; P.L.169-1997, SEC.9.*

#### **IC 23-2-1-9**

##### **Registration; contents of application; renewal; fees; capital requirements**

23-2-1-9 Sec. 9. (a) A broker-dealer, an agent, an investment adviser, or an investment adviser representative may apply for registration by filing with the commissioner or a person designated by the commissioner an application together with a consent to service of process pursuant to section 16 of this chapter and payment of the fee prescribed in subsection (d). The application shall contain whatever information the commissioner requires concerning the following matters:

- (1) The applicant's form and place of organization.
- (2) The applicant's proposed method of doing business.
- (3) The qualifications and business history of the applicant, in the case of a broker-dealer or investment adviser, the qualifications and business history of a partner, an officer, a director, or other person occupying a similar status or performing similar functions or a person directly or indirectly controlling the broker-dealer or investment adviser.
- (4) An injunction, an administrative order, or a conviction of a misdemeanor involving a security or an aspect of the securities business and a conviction of a felony.
- (5) The applicant's financial condition and history.
- (6) Any information to be given to a client or prospective client if the applicant is an investment adviser.

(b) If no denial order is in effect and no proceeding is pending under section 11 of this chapter, registration becomes effective at noon of the thirtieth day after an application is filed. The commissioner may by rule or order specify an earlier effective date and the commissioner may by order defer the effective date until noon of the thirtieth day after the filing of an amendment. Registration of a broker-dealer or an agent shall be effective until December 31 of each year and may be renewed as provided. The registration of an agent terminates when the agent is no longer associated with the issuer or registered broker-dealer specified in the agent's application. The agent and issuer or registered broker-dealer shall promptly notify the commissioner of a termination. The registration of an investment adviser representative terminates when the investment adviser representative is no longer associated with the investment adviser specified in the investment adviser representative's application. The investment adviser representative

and the investment adviser shall promptly notify the commissioner of a termination.

(c) Registration of a broker-dealer, an agent, an investment adviser, or an investment adviser representative may be renewed annually by filing with the commissioner prior to the expiration of the registration an application containing information the commissioner may require to indicate any material change in the information contained in the original application or a renewal application for registration as a broker-dealer, an agent, an investment adviser, or an investment adviser representative filed with the commissioner by the applicant, payment of the prescribed fee, and, in the case of a broker-dealer, a financial statement showing the financial condition of the broker-dealer as of a date within ninety (90) days prior to application. A registered broker-dealer or an investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year without payment of a fee.

(d) For a broker-dealer, the annual fee shall be two hundred fifty dollars (\$250) for initial registration and one hundred twenty-five dollars (\$125) for renewal registration. For an investment adviser, the annual fee shall be one hundred dollars (\$100) for initial registration and fifty dollars (\$50) for renewal registration. For an agent or investment adviser representative, the annual fee for initial or renewal registration shall be twenty-five dollars (\$25). The fee for issuance of a duplicate license shall be five dollars (\$5). Whenever an initial or renewal application for registration of an agent or investment adviser representative is denied or withdrawn, the commissioner shall retain the entire amount paid. When an initial or renewal application for registration of a broker-dealer or investment adviser is denied or withdrawn prior to registration, the commissioner shall retain the entire amount paid.

(e) The commissioner may by rule or otherwise require a minimum amount of capital for registered broker-dealers, not to exceed the limitations provided in Section 15 of the Securities and Exchange Act of 1934 (15 U.S.C. 78o), and establish minimum financial requirements for investment advisers, not to exceed the limitations provided in Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a), which may include different requirements for those investment advisers who maintain custody of client funds or securities or who have discretionary authority over clients' funds or securities and those investment advisers who do not. *(Formerly: Acts 1961, c.333, s.302; Acts 1967, c.255, s.6; Acts 1969, c.221, s.1; Acts 1975, P.L.261, SEC.7.) As amended by Acts 1979, P.L.234, SEC.6; Acts 1981, P.L.214, SEC.6; P.L.232-1985, SEC.3; P.L.228-1989, SEC.8; P.L.177-1991, SEC.6; P.L.113-1992, SEC.2; P.L.169-1997, SEC.10.*

#### **IC 23-2-1-9.1**

##### **Surety bond; cash or securities in lieu of bond; exemptions**

23-2-1-9.1 Sec. 9.1. (a) This section applies to a person who is:

(1) a registered broker-dealer or agent; or  
(2) an investment adviser;  
who has custody of or discretionary authority over client funds or securities.

(b) Except as provided in subsection (d), the commissioner may by order or otherwise require a person as a condition of registration to post a surety bond and establish the amount and conditions of the bond.

(c) A deposit of cash and securities shall be accepted instead of a bond.

(d) A bond may not be required of:

(1) an investment registrant whose net capital exceeds the amount required by the commissioner; or  
(2) an investment adviser whose minimum financial requirements exceed the amount required by the commissioner;  
under section 9(e) of this chapter.

(e) A bond shall provide for an action on the bond by a person who has a cause of action:

(1) under section 19 of this chapter; or  
(2) not arising under this chapter, if the commissioner by rule or order requires that such an action may be brought on the bond.

(f) A bond shall provide that an action may not be maintained to enforce any liability on the bond unless the action is initiated within the time limitations set forth in section 19 of this chapter.

*As added by P.L.169-1997, SEC.11.*

### **IC 23-2-1-10**

#### **Records and reports; examination and disclosure**

23-2-1-10 Sec. 10. (a) A registered broker-dealer shall make and keep accounts, correspondence, memoranda, papers, books, and other records as the commissioner requires by rule or otherwise. The commissioner's requirements may not exceed the limitations provided in Section 15 of the Securities and Exchange Act of 1934 (15 U.S.C. 78o).

(b) An investment adviser shall make and keep accounts, correspondence, memoranda, papers, books, and other records as the commissioner requires by rule or otherwise. The commissioner's requirements may not exceed the limitations provided in Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a). The commissioner may prescribe by rule or otherwise the period that an investment adviser must retain records.

(c) All the records of a registered broker-dealer or an investment adviser are subject at any time to reasonable periodic, special, or other examinations by representatives of the commissioner, within or without Indiana, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors. No charges or other examination fees may be assessed against a registered broker-dealer or an investment adviser as a result of an examination under this subsection unless the examination results in

an investigation or examination made under section 16(d) of this chapter. To avoid duplication of examinations of records, the commissioner may cooperate with the securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities and Exchange Act of 1934 (15 U.S.C. 77b et seq.).

(d) Every registered broker-dealer and investment adviser shall file financial reports and other reports as the commissioner by rule or order prescribes. The commissioner's reporting requirements for registered broker-dealers may not exceed the limitations provided in Section 15 of the Securities and Exchange Act of 1934 (15 U.S.C. 78o). The commissioner's reporting requirements for investment advisers may not exceed the limitations provided in Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a).

(e) If the information contained in a document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment.

(f) The commissioner may require investment advisers to furnish or disseminate certain information necessary or appropriate for the public interest or to protect investors or clients. The commissioner may determine that the information furnished to clients or prospective clients of an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80a-1 et seq.) and the rules adopted under the Investment Advisers Act of 1940 may be used to satisfy this requirement.

(g) The commissioner may annually select as many as twenty-five percent (25%) of all Indiana home and branch offices of registered broker-dealers for completion of compliance reports. The offices shall be selected at random. Each broker-dealer office that is selected shall file its compliance report according to rules adopted by the commissioner under IC 4-22-2 not more than ninety (90) days after being notified of selection under this subsection. No charges or other examination fees may be assessed against a registered broker-dealer as a result of the examination of a compliance report filed under this subsection unless the examination results in an investigation or examination made under section 16(d) of this chapter.

*(Formerly: Acts 1961, c.333, s.303; Acts 1967, c.255, s.7; Acts 1975, P.L.261, SEC.8.) As amended by P.L.228-1989, SEC.9; P.L.178-1991, SEC.1; P.L.205-1993, SEC.1; P.L.169-1997, SEC.12; P.L.164-2001, SEC.1.*

#### **IC 23-2-1-11**

##### **Denial, suspension, revocation, or cancellation of registration; censure; grounds; procedure**

23-2-1-11 Sec. 11. (a) The commissioner may by order deny, suspend, or revoke a registration, censure a registrant or an officer, a director, a partner, or a person performing similar functions for a registrant, or other persons who offered or sold securities in Indiana, or bar a registrant or an officer, a director, a partner, or a person

performing similar functions for a registrant or other persons who offered or sold securities in Indiana from employment with a registered broker-dealer or an investment adviser if the commissioner finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or an investment adviser, a partner, an officer, or a director or a person performing similar functions or a person directly or indirectly controlling the broker-dealer or an investment adviser, or other persons who offered or sold securities in Indiana has done any of the following:

- (1) Has filed an application for registration which, as of its effective date or as of a date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact.
- (2) Has knowingly violated or failed to comply with this chapter or a rule under this chapter.
- (3) Is permanently or temporarily enjoined by a court from engaging in or continuing any conduct or practice involving any aspect of the securities business.
- (4) Is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, an agent, an investment adviser, or an investment adviser representative.
- (5) Is the subject of an order entered within the past five (5) years by the securities administrator of any other state or by the Securities and Exchange Commission denying or revoking registration as a broker-dealer, an agent, an investment adviser, an investment adviser representative, or the substantial equivalent of those terms as defined in this chapter, is the subject of an order of the Securities and Exchange Commission suspending or expelling the person from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a-78kk), or is the subject of a United States post office fraud order.
- (6) Has engaged in dishonest or unethical practices in the securities business.
- (7) Is insolvent, either in the sense that the person's liabilities exceed the person's assets or in the sense that the person cannot meet the person's obligations as they mature. The commissioner may not enter an order against a broker-dealer or an investment adviser under this subdivision without a finding of insolvency as to the broker-dealer or investment adviser.
- (8) Has not complied with the conditions imposed by sections 9(e) and 9.1 of this chapter.
- (9) Is lacking in integrity, is not of good business reputation, or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business.
- (10) Has failed to pay the proper filing fee. The commissioner may enter only a denial order under this subdivision and the



commissioner shall vacate the order when the deficiency has been corrected.

(11) Has unreasonably delayed the delivery of securities purchased or the remittance for securities sold.

(12) Has failed to give notice in writing to a customer whether the broker-dealer is dealing as a principal or as agent, and if as an agent, whether for buyer or seller, or both.

(13) Has failed to deliver the purchased stock certificate or other securities to a buyer or payment to a seller of securities within forty-five (45) days of the date of the transaction. (If, within forty-five (45) days of the date of the transaction, the broker-dealer or the broker-dealer's agent notifies in writing the commissioner that delivery will not be completed within the statutory period, and a written notification gives good and sufficient cause for the delay, this provision for suspension shall not be applicable. Good and sufficient cause shall include but not be limited to delay caused by a transfer agent after delivery of securities to the same for transfer on the records of the corporation. The forty-five (45) day period shall not be regarded as a standard of reasonableness for the purposes of subdivision (11).)

(14) Has failed reasonably to supervise the person's agents or employees if the person is a broker-dealer or the person's investment adviser representatives or employees if the person is an investment adviser to assure their compliance with this chapter.

(15) Has been convicted within ten (10) years before the date of the application or registration of a crime involving fraud or deceit or has a felony conviction (as defined in IC 35-50-2-1) within five (5) years before the date of application or registration.

(16) Is on the most recent tax warrant list supplied to the commissioner by the department of state revenue.

(17) Has, within the last ten (10) years, been the subject of an adjudication or determination by a court of competent jurisdiction or by the Securities and Exchange Commission, the Commodity Futures Trading Commission, or by a securities or commodities agency or administrator of another state, and, after notice and opportunity for a hearing, has been found to have willfully violated the Securities Act of 1933 (15 U.S.C. 77a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 77b et seq.), the Investment Advisers Act of 1940 (15 U.S.C. 80b et seq.), the Investment Company Act of 1940 (15 U.S.C. 80a et seq.), the Commodity Exchange Act (7 U.S.C. 1 et seq.), or the securities or commodities law of any other state.

(18) Has been denied the right to do business in the securities, commodities, banking, financial services, or insurance industry, or the person's respective authority to do business in the securities, commodities, banking, financial services, or insurance industry has been revoked or suspended by any other

state, federal, or foreign governmental agency or self-regulatory organization for cause.

(19) Is the subject of a cease and desist order entered by the Securities and Exchange Commission, the Commodity Futures Trading Commission, or by a securities or commodities agency or administrator of another state.

A person described in subdivisions (1) through (19) violates this chapter.

(b) The following provisions govern the application of subsection

(a)(9):

(1) The commissioner may not enter an order against a broker-dealer on the basis of the lack of qualification of a person other than:

- (A) the broker-dealer if the broker-dealer is an individual; or
- (B) an agent of the broker-dealer.

(2) The commissioner may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge, or both.

(3) The commissioner shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer, and that an investment adviser representative who will work under the supervision of a registered investment adviser need not have the same qualifications as an investment adviser.

(4) The commissioner may by rule provide for an examination, including an examination developed or approved by an organization of securities administrators, which may be written or oral or both, to be taken by a class of or all applicants. The commissioner may by rule or order waive the examination requirement for a person or class of persons if the commissioner determines the examination is not necessary for the protection of the public.

(5) The commissioner may not enter an order against an investment adviser on the basis of the lack of qualification of a person other than:

- (A) the investment adviser if the investment adviser is an individual; or
- (B) an investment adviser representative.

(6) The commissioner shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or an agent. When the commissioner finds that an applicant for a broker-dealer registration is not qualified as an investment adviser, the commissioner may by order condition the applicant's registration as a broker-dealer upon the applicant's not transacting business in Indiana as an investment adviser.

(c) The commissioner may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to the commissioner when registration became effective, unless the proceeding is instituted within the next one hundred eighty (180)

days. The commissioner may by order summarily postpone or suspend registration pending final determination of a proceeding under this section concerning an application for registration or renewal of registration. Upon the entry of the order, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or an investment adviser representative, that:

- (1) the order has been entered and the reasons for the order; and
- (2) within fifteen (15) days after receipt of a written request the matter will be set for hearing.

If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

(d) Withdrawal from registration as a broker-dealer, an agent, an investment adviser, or an investment adviser representative becomes effective thirty (30) days after receipt of an application to withdraw or within a shorter period of time as the commissioner may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke, suspend, or impose conditions upon the withdrawal is instituted within thirty (30) days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at the time and upon the conditions as the commissioner by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the commissioner may institute a revocation or suspension proceeding under subsection (a) within one (1) year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.

(e) No order may be entered under this section except for orders of postponement entered under subsection (c) or orders of suspension under subsection (i), without appropriate prior notice to the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is an agent or an investment adviser representative), opportunity for hearing, and written findings of fact and conclusions of law.

(f) If the commissioner finds that a registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, an agent, an investment adviser, or an investment adviser representative, is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the commissioner may by order cancel the registration or application.

(g) For purposes of proceedings by the commissioner under this chapter with respect to the registration of an agent or an investment adviser representative, the commissioner may institute proceedings under subsection (a) within one (1) year after termination or expiration of a registration and enter a revocation or suspension order as of the last date on which the registration was effective.

(h) The commissioner shall notify the insurance commissioner when an order is issued under this section denying, suspending, or revoking registration.

(i) The commissioner may by order summarily suspend a registration pending a final determination of a proceeding under this section. Upon the entry of the order, the commissioner shall promptly notify the registrant, as well as the employer if the registrant is an agent, that the order has been entered. The notice must include a statement:

(1) of reasons for entry of the order; and

(2) that within fifteen (15) days after the receipt of a written request the matter will be set down for a hearing.

If a hearing is not requested and none is ordered by the commissioner, the order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may modify or vacate the order or extend it until a final determination.

*(Formerly: Acts 1961, c.333, s.304; Acts 1967, c.255, s.8; Acts 1975, P.L.261, SEC.9.) As amended by Acts 1978, P.L.2, SEC.2305; P.L.232-1985, SEC.4; P.L.19-1986, SEC.41; P.L.6-1987, SEC.19; P.L.31-1988, SEC.7; P.L.228-1989, SEC.10; P.L.75-1990, SEC.7; P.L.113-1992, SEC.3; P.L.11-1996, SEC.14; P.L.169-1997, SEC.13; P.L.164-2001, SEC.2.*

## **IC 23-2-1-12**

### **Fraudulent or deceitful acts**

23-2-1-12 Sec. 12. It is unlawful for any person in connection with the offer, sale or purchase of any security, either directly or indirectly, (1) to employ any device, scheme or artifice to defraud, or (2) to make any untrue statements of a material fact or to omit to state a material fact necessary in order to make the statements made in the light of circumstances under which they are made, not misleading, or (3) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

*(Formerly: Acts 1961, c.333, s.401.)*

### **IC 23-2-1-12.1**

#### **Unlawful practices; investment advisers and investment adviser representatives**

23-2-1-12.1 Sec. 12.1. (a) It is unlawful for an investment adviser or an investment adviser representative who receives consideration, directly or indirectly, from another person for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise to:

(1) employ a device, scheme, or artifice to defraud the other person;

(2) engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon the other person; or

(3) knowingly sell to or purchase from a client a security when the investment adviser or investment adviser representative is acting as principal for the adviser's or the representative's own account, or knowingly sell to or purchase for the account of a client a security when the investment adviser or investment adviser representative is acting as a broker for a person other than the client without:

(A) disclosing to the client in writing before the completion of the sale or purchase the fact that the investment adviser or investment adviser representative is acting as a broker for a person other than the client; and

(B) obtaining consent from the client for the sale or purchase.

The prohibitions of this subdivision do not apply to a transaction with a client of a broker-dealer if the broker-dealer is not acting as an investment adviser in the transaction.

(b) Except as permitted by rule or order of the commissioner, it is unlawful for an investment adviser to enter into, extend, or renew an investment advisory contract unless it provides in writing that:

(1) the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or a portion of the funds of the client;

(2) no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(3) the investment adviser, if a partnership, shall notify the other party to the contract of a change in the membership of the partnership within a reasonable time after the change.

Subdivision (1) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment", as used in subdivision (2), includes a direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor, but if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority interest in the business of the investment adviser or from the admission to the investment adviser of one (1) or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(c) It is unlawful for an investment adviser to take or have custody of the securities of a client if:

(1) the commissioner by rule prohibits custody; or

(2) in the absence of a rule, the investment adviser fails to notify the commissioner that the investment adviser has or may have custody.

(d) When soliciting advisory clients, it is unlawful for a person to make an untrue statement of a material fact or omit to state a material

fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

(e) The commissioner may by rule or order allow exemptions from subsections (a)(3), (b)(1), (b)(2), and (b)(3) if the exemptions are in the public interest and within the purposes of this chapter.

(f) The commissioner may by rule or order require disclosure in writing of the information specified by the commissioner by an investment adviser or an investment adviser representative to a client or prospective client.

(g) It is unlawful for a person that is required to be registered under Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3) as an investment adviser to:

- (1) employ a device, scheme, or artifice to defraud another person;
- (2) engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person; or
- (3) when soliciting advisory clients, to make an untrue statement of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances in which they are made, not misleading.

*(Formerly: Acts 1975, P.L.261, SEC.10.) As amended by P.L.228-1989, SEC.11; P.L.75-1990, SEC.8; P.L.169-1997, SEC.14.*

### **IC 23-2-1-13**

#### **Filing false or misleading statements**

23-2-1-13 Sec. 13. It is unlawful for any person to make or cause to be made in any document filed with or sent to the commissioner or division or in any proceeding, investigation, or examination under this chapter, any statement which is at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

*(Formerly: Acts 1961, c.333, s.501.) As amended by P.L.34-1987, SEC.283; P.L.11-1996, SEC.15.*

### **IC 23-2-1-14**

#### **Statements relating to fact of registration**

23-2-1-14 Sec. 14. (a) Neither:

- (1) the fact that a registration statement under sections 3 through 7 of this chapter, or an application for registration under sections 8 through 11 of this chapter, has been filed; nor
- (2) the fact that a security or a person is effectively registered; constitutes a finding by the commissioner that any document filed under this chapter is true, complete, and not misleading. Neither any such fact, nor the fact that an exemption or exception is available for a security or a transaction, means that the commissioner has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security, or transaction.

(b) It is unlawful to make or cause to be made to any prospective purchaser, customer, or client any representation inconsistent with

subsection (a).

*(Formerly: Acts 1961, c.333, s.502.) As amended by P.L.34-1987, SEC.284.*

## **IC 23-2-1-15**

### **Securities division**

23-2-1-15 Sec. 15. (a) This chapter shall be administered by a division of the office of the secretary of state. The secretary of state shall appoint a securities commissioner who shall be responsible for the direction and supervision of the division and the administration of this chapter under the direction and control of the secretary of state. The salary of the securities commissioner shall be paid out of the funds appropriated for the administration of this chapter. The commissioner shall serve at the will of the secretary of state.

(b) The secretary of state:

- (1) shall employ a chief deputy, a senior investigator, a senior accountant, and other deputies, investigators, accountants, clerks, stenographers, and other employees necessary for the administration of this chapter; and
- (2) shall fix their compensation with the approval of the budget agency.

The chief deputy, other deputies, the senior investigator, and the senior accountant, once employed under this chapter, may be dismissed only for cause by the secretary of state upon ten (10) days notice in writing stating the reasons for dismissal. Within fifteen (15) days after dismissal, the chief deputy, other deputies, the senior investigator, and the senior accountant may appeal to the state personnel board. The state personnel board shall hold a hearing, and if it finds that the appealing party was dismissed for a political, social, religious, or racial reason, the appealing party shall be reinstated to the appealing party's position without loss of pay. In all other cases, if the decision is favorable to the appealing party, the secretary of state shall follow the findings and recommendations of the board, which may include reinstatement and payment of salary or wages lost. The hearing and any subsequent proceedings or appeals shall be governed by the provisions of IC 4-15-2 and IC 4-21.5.

(c) Fees and funds of whatever character accruing from the administration of this chapter shall be accounted for by the secretary of state and shall be deposited with the treasurer of state to be deposited by the treasurer of state in the general fund of the state. Expenses incurred in the administration of this chapter shall be paid from the general fund upon appropriation being made for the expenses in the manner provided by law for the making of those appropriations. However, costs of investigations recovered under sections 16(d) and 17.1(c) of this chapter shall be deposited with the treasurer of state to be deposited by the treasurer of state in a separate account to be known as the securities division enforcement account. The funds in the account shall be available, with the approval of the budget agency, to augment and supplement the funds appropriated for the administration of this chapter. The funds in the

account do not revert to the general fund at the end of any fiscal year.

(d) In connection with the administration and enforcement of the provisions of this chapter, the attorney general shall render all necessary assistance to the securities commissioner upon the commissioner's request, and to that end, the attorney general shall employ legal and other professional services as are necessary to adequately and fully perform the service under the direction of the securities commissioner as the demands of the securities division shall require. Expenses incurred by the attorney general for the purposes stated in this subsection shall be chargeable against and paid out of funds appropriated to the attorney general for the administration of the attorney general's office.

(e) Neither the secretary of state, the securities commissioner, nor an employee of the securities division shall be liable in their individual capacity, except to the state, for an act done or omitted in connection with the performance of their respective duties under this chapter.

(f) The commissioner, subject to the approval of the secretary of state, may adopt rules, orders, and forms necessary to carry out this chapter, including rules and forms concerning registration statements, applications, reports, and the definitions of any terms if the definitions are consistent with this chapter. The commissioner may by rule or order allow for exemptions from registration requirements under sections 3 and 8 of this chapter if the exemptions are consistent with the public interest and this chapter.

(g) The provisions of this chapter delegating and granting power to the secretary of state, the securities division, and the securities commissioner shall be liberally construed to the end that:

- (1) the practice or commission of fraud may be prohibited and prevented;
- (2) disclosure of sufficient and reliable information in order to afford reasonable opportunity for the exercise of independent judgment of the persons involved may be assured; and
- (3) the qualifications may be prescribed to assure availability of reliable broker-dealers, investment advisers, and agents engaged in and in connection with the issuance, barter, sale, purchase, transfer, or disposition of securities in this state.

It is the intent and purpose of this chapter to delegate and grant to and vest in the secretary of state, the securities division, and the securities commissioner full and complete power to carry into effect and accomplish the purpose of this chapter and to charge them with full and complete responsibility for its effective administration.

(h) It is the duty of a prosecuting attorney, as well as of the attorney general, to assist the securities commissioner upon the commissioner's request in the prosecution to final judgment of a violation of the penal provisions of this chapter and in a civil proceeding or action arising under this chapter. If the commissioner determines that an action based on the securities division's investigations is meritorious:

- (1) the commissioner or a designee empowered by the



commissioner shall certify the facts drawn from the investigation to the prosecuting attorney of the judicial circuit in which the crime may have been committed;

(2) the commissioner and the securities division shall assist the prosecuting attorney in prosecuting an action under this section, which may include a securities division attorney serving as a special deputy prosecutor appointed by the prosecuting attorney;

(3) a prosecuting attorney to whom facts concerning fraud are certified under subdivision (1) may refer the matter to the attorney general; and

(4) if a matter has been referred to the attorney general under subdivision (3), the attorney general may:

(A) file an information in a court with jurisdiction over the matter in the county in which the offense is alleged to have been committed; and

(B) prosecute the alleged offense.

(i) The securities commissioner shall take, prescribe, and file the oath of office prescribed by law. The securities commissioner, senior investigator, and each deputy are police officers of the state and shall have all the powers and duties of police officers in making arrests for violations of this chapter, or in serving any process, notice, or order connected with the enforcement of this chapter by whatever officer or authority or court issued. The securities commissioner, the deputy commissioners for enforcement, and the investigators comprise the enforcement department of the division and are considered a criminal justice agency for purposes of IC 5-2-4 and IC 10-13-3.

(j) The securities commissioner and each employee of the securities division shall be reimbursed for necessary hotel and travel expenses when required to travel on official duty. Hotel and travel reimbursements shall be paid in accordance with the travel regulations prescribed by the budget agency.

(k) It is unlawful for the secretary of state, the securities commissioner, or the securities division's employees to use for personal benefit information that is filed with or obtained by the securities division and that is not made public. No provision of this chapter authorizes the secretary of state, the securities commissioner, or the employees of the securities division to disclose information except among themselves, or when necessary or appropriate, in a proceeding or investigation under this chapter. No provision of this chapter either creates or derogates from a privilege that exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the secretary of state, the securities commissioner, or the securities division or its employees.

(l) The commissioner may honor requests from interested persons for interpretative opinions and from interested persons for determinations that the commissioner will not institute enforcement proceedings against specified persons for specified activities. A determination not to institute enforcement proceedings must be consistent with this chapter. A person may not request an interpretive

opinion concerning an activity that:

(1) occurred before; or

(2) is occurring on;

the date that the opinion is requested. The commissioner shall charge a fee of one hundred dollars (\$100) for an interpretative opinion or determination.

*(Formerly: Acts 1961, c.333, s.503; Acts 1967, c.255, s.9; Acts 1975, P.L.261, SEC.11.) As amended by Acts 1976, P.L.115, SEC.1; P.L.240-1983, SEC.4; P.L.130-1984, SEC.8; P.L.5-1988, SEC.125; P.L.228-1989, SEC.12; P.L.177-1991, SEC.7; P.L.169-1997, SEC.15; P.L.2-2003, SEC.62; P.L.270-2003, SEC.1; P.L.73-2004, SEC.7.*

### **IC 23-2-1-16**

#### **Consent to suit; service of process; investigations; hearings; evidence; notice**

23-2-1-16 Sec. 16. (a) With the filing of any application for registration pursuant to this chapter, there shall be filed the irrevocable written consent of the applicant that suits and actions growing out of the violation of any provision or provisions of this chapter may be commenced against the applicant in the proper courts of any county in this state in which a cause of action may arise, or in which the plaintiff may reside, by the service of any process or pleading authorized by the laws of this state upon the secretary of state. The consent must stipulate and agree that service of process or pleadings on the secretary of state shall be taken and held in all courts to be as valid and binding as if due service has been made upon the applicant. The written consent shall be authenticated by:

(1) the seal of the applicant if the applicant has a seal; and

(2) the acknowledged signature of:

(A) the members of the partnership, or the depositors, managers, or committee;

(B) any officers of the corporation, or of the incorporated or unincorporated association if the applicant be an incorporated or unincorporated association, duly authorized by resolution of the board of directors, trustees, or managers of the corporation or association, and accompanied by a duly certified copy of the resolution of the board of directors, trustees, or managers of the corporation or association authorizing the officers to execute the same; or

(C) any members or managers of the limited liability company, duly authorized by the members and managers of the limited liability company and accompanied by a duly certified copy of the resolution of the members or managers of the limited liability company which authorizes the members or managers to execute the same.

(b) The engaging in this state by a nonresident broker-dealer, investment advisor, agent, issuer, offeror, or seller, in any transaction, or the doing of any business in this state involving a sale of securities, or an offer to sell securities, shall be deemed equivalent

to an appointment by the nonresident broker-dealer, investment advisor, agent, issuer, offeror, or seller, of the secretary of state, or his successor in office, to be his true and lawful attorney upon whom may be served any lawful process, writ, notice, or order, in any action or proceeding against such nonresident broker-dealer, investment advisor, agent, issuer, offeror, or seller, arising or growing out of any transaction, or of the doing of any business involving a sale of securities, or offer to sell securities in this state. The engaging in any such transaction, or the doing of any such business in this state, shall be signification of the agreement of such nonresident broker-dealer, investment advisor, agent, issuer, offeror, or seller, that any process, writ, notice, or order against him which is so served shall be of the same legal force and effect as if served upon such nonresident broker-dealer, investment advisor, agent, issuer, offeror, or seller personally. Any action or proceeding against a nonresident broker-dealer, agent, issuer, offeror, or seller, may be instituted or commenced in the proper court of any county in this state in which the nonresident broker-dealer, investment advisor, agent, issuer, offeror, or seller, shall have engaged in any transaction or shall have done any business in this state involving a sale of securities, or an offer to sell securities, or in the county in which the person bringing the action may reside.

(c) The service of any process, writ, notice, or order against an applicant not domiciled in this state, or against a nonresident broker-dealer, investment advisor, agent, issuer, offeror, or seller, shall be made by leaving duplicate copies thereof with a fee of two dollars (\$2) with the secretary of state, or in his office, and the service shall be deemed sufficient service, if the notice of service and a copy of the process, writ, notice, or order are forthwith sent by registered mail with return receipt requested, addressed to the person so served at the address disclosed upon any such written consent that may have been filed in the office of the secretary of state, or as disclosed upon any written notification of address filed by the person to be served, or if no address is filed in the office of the secretary of state then at any other address, if any, known or disclosed to the secretary of state. Upon return of the return receipt showing delivery and the acceptance of the registered mail, or upon the return of the registered mail showing a refusal of the acceptance, the secretary of state shall attach either the return receipt or the refused mail to the copy of the process, writ, notice, or order retained by him, and mail the same to the clerk of the court in which the action or proceeding is pending in respect to which the process, writ, notice, or order was issued, or the secretary of state shall return the copy of the process, writ, notice, or order to the clerk with the advice, if such be the case, that no address to which the process, writ, notice, or order may be mailed is known to the secretary of state. The clerk of the court shall thereupon file the same, and the same shall be deemed a part of the record in the action or proceeding without a special bill of exceptions therefor. Refusal of any person to accept delivery of the registered mail provided in this section, or the refusal to sign the return receipt,

or the ignorance of the secretary of state of any address to which process, writ, notice, or order may have been mailed, shall not in any manner affect the legality or effect of service, and the person shall be presumed to have had knowledge of the contents of any process, writ, notice, or order contained therein, or issued in connection with any proceeding resulting from the transaction in which the person may have participated in this state. No process, writ, notice, or order served in this section provided shall be returnable in less than twenty (20) days from the date the same shall have been issued.

(d) The securities division is authorized to make investigations and examinations:

- (1) in connection with any application for registration of any security, broker-dealer, investment advisor, or agent, or any registration thereof already granted; or
- (2) whenever it appears to the commissioner upon the basis of a complaint or information that reasonable grounds exist for the belief that an investigation or examination is necessary or advisable for the more complete protection of the interests of the public.

On investigations and examinations made by the commissioner or an employee of the securities division, all reasonable expenses, including, but not limited to, a per diem prorated upon the salary of such commissioner or employee together with the actual traveling and hotel expenses, may be charged as costs of the investigation or examination to be paid by the party or parties under investigation or examination. Before a hearing on the matter under investigation, the commissioner may require the posting of a bond in the penal sum of five hundred dollars (\$500), or in such other additional amount as may be required to guarantee the payment of the costs of the investigation and hearing, to the state of Indiana with sufficient surety to be approved by the commissioner.

(e) The secretary of state or the commissioner shall have the power to sign all orders, official certifications, documents, or papers, under any of the provisions of this chapter. The commissioner shall have the power to:

- (1) hold and conduct hearings before the commissioner or authorize the same to be held before a hearing officer appointed by the commissioner in any county in Indiana;
- (2) hear evidence;
- (3) conduct inquiries with or without hearings;
- (4) receive reports of investigators or other officers or employees of the state of Indiana, or of any municipal corporation within the state or governmental subdivision;
- (5) administer oaths, or cause them to be administered;
- (6) subpoena witnesses, and compel them to attend and testify; and
- (7) to compel the production of books, records, and other documents.

(f) Upon:

- (1) disobedience on the part of any person to any lawful

subpoena issued under authority of this chapter, or to any lawful order or demand requiring the production of any books, accounts, papers, records, documents, or other evidence or information as provided in this chapter; or

(2) the refusal of any witness to appear when subpoenaed, or to testify to any matter regarding which he may be lawfully interrogated, or to take or subscribe to any oath required by this chapter;

it shall be the duty of the circuit or superior court of the county in which the hearing or inquiry or investigation in question is being or is to be held, where demand is made, or where said production is ordered to be made, upon written petition of the commissioner or a hearing officer appointed by the commissioner, to compel obedience to the lawful requirements of the subpoena, order, or demand, to compel the production of the necessary or required books, papers, records, documents, and other evidence and information, to compel any witness to attend in any county within this state and to testify to any matter regarding which he may lawfully be interrogated, and to take or subscribe to any oath required, and, upon the failure, refusal, or neglect of any person to comply with any order of any court or judge thereof, as provided in this section, such person shall be punished for contempt of court.

(g) If a witness, in any hearing, inquiry, or investigation conducted under this chapter, refuses to answer any question or produce any item, the commissioner or a hearing officer appointed by the commissioner may file a written petition with the circuit or superior court in the county where the hearing, investigation, or inquiry in question is being conducted requesting a hearing on the refusal. The court shall hold a hearing to determine if the witness may refuse to answer the question or produce the item. If the court determines that the witness, based upon his privilege against self-incrimination, may properly refuse to answer or produce an item, the commissioner or a hearing officer appointed by the commissioner may make a written request that the court grant use immunity to the witness. Upon written request of the commissioner or a hearing officer appointed by the commissioner, the court shall grant use immunity to a witness. The court shall instruct the witness, by written order or in open court, that:

(1) any evidence the witness gives, or evidence derived from that evidence, may not be used in any criminal proceedings against that witness, unless the evidence is volunteered by the witness or is not responsive to a question; and

(2) the witness must answer the questions asked and produce the items requested.

A grant of use immunity does not prohibit the use of evidence that the witness gives in a hearing, investigation, or inquiry from being used in a prosecution for perjury under IC 35-44-2-1. If a witness refuses to give the evidence after the witness has been granted use immunity, the court may find the witness in contempt.

(h) Upon order of the commissioner or a hearing officer appointed

by the commissioner in any hearing, depositions may be taken of any witness residing within or without the state. The depositions shall be taken in the manner prescribed by law for depositions in civil actions and made returnable to the commissioner or a hearing officer appointed by the commissioner.

(i) Each witness who shall appear before the commissioner or a hearing officer appointed by the commissioner by order shall receive for the witness's attendance the fees and mileage provided for witnesses in civil cases, which shall be audited and paid by the state in the same manner as other expenses of the securities division are audited and paid upon the presentation of proper vouchers sworn to by the witnesses and approved by the commissioner. However, no witnesses subpoenaed at the instance of parties other than the commissioner or a hearing officer appointed by the commissioner shall be entitled to any fee or compensation from the state.

(j) It is not necessary to negative any of the exemptions or classifications in this chapter provided in any complaint, information, indictment, or any other writ or proceedings laid or brought under this chapter, and the burden of proof of any exemption or classification shall be upon the party claiming the benefits of the exemption or classification.

(k) In any prosecution, action, suit, or proceeding based upon or arising out of or under the provisions of this chapter, a certificate duly signed by the commissioner showing compliance or noncompliance with the provisions of this chapter respecting the security in question or respecting compliance or noncompliance with the provisions of this chapter, by any issuer, broker-dealer, investment advisor, or agent, shall constitute prima facie evidence of compliance or noncompliance with the provisions of this chapter, as the case may be, and shall be admissible in evidence in any action at law or in equity to enforce the provisions of this chapter.

(l) Copies of any statement and documents filed in the office of the secretary of state and of any records of the secretary of state certified to by the commissioner or any deputy shall be admissible in any prosecution, action, suit, or proceeding based upon, or arising out of, or under the provisions of this chapter to the same effect as the original of such statement, document, or record would be if actually produced.

(m) Whenever, under the provisions of this chapter, any person is entitled to receive notice or required to be served with notice in any proceeding instituted by the commissioner pursuant to the provisions of this chapter, notice shall be deemed sufficient:

(1) if sent by registered mail with return receipt requested to that person or the person's designated attorney or agent for service of process at:

- (A) the person's last known residence;
- (B) the person's last known place of business; or
- (C) the last known address at which the person purports to receive mail;

(2) if personally delivered and left with a person of suitable age

or in a conspicuous place at:

- (A) the person's last known residence;
- (B) the person's last known place of business; or
- (C) the last known address at which the person purports to receive mail; or

(3) by personal service on the person.

*(Formerly: Acts 1961, c.333, s.504; Acts 1967, c.255, s.10; Acts 1969, c.190, s.2; Acts 1975, P.L.261, SEC.12.) As amended by P.L.240-1983, SEC.5; P.L.130-1984, SEC.9; P.L.8-1993, SEC.309; P.L.270-2003, SEC.2.*

### **IC 23-2-1-16.5**

#### **Subpoenas**

23-2-1-16.5 Sec. 16.5. The commissioner may issue, and apply to a court to enforce, subpoenas in Indiana at the request of a securities agency or administrator of another state if the subpoena concerns an alleged violation that would be a violation of this chapter.

*As added by P.L.228-1989, SEC.13.*

### **IC 23-2-1-17**

#### **Repealed**

*(Repealed by Acts 1975, P.L.261, SEC.17.)*

### **IC 23-2-1-17.1**

#### **Violations; investigations; cease and desist orders and other orders; injunctions; appointment of receiver; subpoena; hearing; costs and expenses of investigation**

23-2-1-17.1 Sec. 17.1. (a) Whenever it appears to the commissioner that a person has engaged in or is about to engage in an act or practice constituting a violation of this chapter or a rule or order under this chapter, the commissioner may investigate and may issue, with or without a prior hearing, orders and notices as the commissioner determines to be in the public interest, including cease and desist orders, orders to show cause, and notices. After notice and hearing, the commissioner may enter an order of rescission, restitution, or disgorgement, including interest at the rate of eight percent (8%) per year, directed to a person who has violated this chapter or a rule or order under this chapter. In addition to all other remedies, the commissioner may bring an action in the name and on behalf of the state against the person and any other person participating in or about to participate in a violation of this chapter, to enjoin the person from continuing or doing an act furthering a violation of this chapter and may obtain the appointment of a receiver or conservator. Upon a proper showing by the commissioner, the court shall enter an order of the commissioner directing rescission, restitution, or disgorgement to a person who has violated this chapter or a rule or order under this chapter. In a court proceeding, the commissioner may apply for and on due showing be entitled to have issued the court's subpoena requiring the appearance of a defendant and the defendant's employees or agents and the

production of documents, books, and records as may appear necessary for the hearing of the petition, to testify and give evidence concerning the acts or conduct or things complained of in the action. In the action, the circuit or superior courts shall have jurisdiction of the subject matter. The court may not require the commissioner to post a bond.

(b) Upon the issuance of an order or notice by the commissioner under subsection (a), the commissioner shall promptly notify the respondent that it has been issued and the reasons it has been issued and that upon the receipt of a written request the matter will be set down for a hearing to commence within forty-five (45) business days after receipt of the request unless the respondent consents to a later date. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of an opportunity for hearing may modify or vacate the order or extend it until final determination.

(c) In a proceeding in a circuit or superior court under this section, the commissioner shall be entitled to recover all costs and expenses of investigation to which the commissioner would be entitled in an administrative proceeding under section 16(d) of this chapter, and the court shall include the costs in its final judgment.

(d) The commissioner shall notify the insurance commissioner when an administrative action or civil proceeding is filed under this section.

*(Formerly: Acts 1975, P.L.261, SEC.13.) As amended by P.L.130-1984, SEC.10; P.L.31-1988, SEC.8; P.L.228-1989, SEC.14; P.L.75-1990, SEC.9; P.L.11-1996, SEC.16.*

### **IC 23-2-1-17.5**

#### **Prohibited actions related to viatical settlement contracts**

23-2-1-17.5 Sec. 17.5. (a) This section applies to the following:

- (1) The secretary of state.
- (2) The securities commissioner.
- (3) A prosecuting attorney.
- (4) The attorney general.
- (5) A designee of a person specified in subdivisions (1) through (4).

(b) A person specified in subsection (a) shall not take any action against another person under this chapter solely because a:

- (1) viatical settlement contract; or
- (2) fractional or pooled interest in a viatical settlement contract;

that was the subject of a transaction in which the other person was involved before March 17, 2000, was not registered under this chapter.

(c) A person specified in subsection (a) shall not take any action against another person under this chapter solely because the other person did not, before March 17, 2000, comply with the:

- (1) registration requirements of this chapter; or
- (2) requirements of this chapter that apply to a person that



offers or sells securities in Indiana;  
if the other person did not at the time of the offer or sale, and before March 17, 2000, offer or sell securities other than a viatical settlement contract or a fractional or pooled interest in a viatical settlement contract.

(d) A person specified in subsection (a) shall not take any action against another person under this chapter solely because the other person did not comply with the registration requirements referred to in subsections (b) and (c).

*As added by P.L.223-2005, SEC.1.*

## **IC 23-2-1-18**

### **Repealed**

*(Repealed by Acts 1975, P.L.261, SEC.17.)*

## **IC 23-2-1-18.1**

### **Violations; felony**

23-2-1-18.1 Sec. 18.1. A person who knowingly violates this chapter commits a Class C felony.

*(Formerly: Acts 1975, P.L.261, SEC.14.) As amended by Acts 1978, P.L.2, SEC.2306.*

## **IC 23-2-1-19**

### **Deceptive practices; civil liability; rights and remedies; costs; attorney's fees**

23-2-1-19 Sec. 19. (a) A person who offers or sells a security in violation of this chapter, and who does not sustain the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the violation, is liable to any other party to the transaction who did not knowingly participate in the violation or who did not have, at the time of the transaction, knowledge of the violation, who may sue either at law or in equity to rescind the transaction or to recover the consideration paid, together, in either case, with interest as computed in subsection (g)(1), plus costs, and reasonable attorney's fees, less the amount of any cash or other property received on the security upon the tender of the security by the person bringing the action or for damages if the person no longer owns the security. Damages are the amount that would be recoverable upon a tender less:

(1) the value of the security when the buyer disposed of the security; and

(2) the interest as computed in subsection (g)(1) on the value of the security from the date of disposition.

(b) A person who purchases a security in violation of this chapter, and who does not sustain the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the violation, is liable to any other party to the transaction who did not knowingly participate in the violation or who did not have, at the time of the transaction, knowledge of the violation. The other party to the transaction may bring an action to rescind the transaction or

for damages, together, in either case, with reasonable attorney's fees, upon the tender of the consideration received by the person bringing the action.

(c) A person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues analyses or reports concerning securities and:

- (1) violates section 8, 12.1(b), 14, or 26 of this chapter;
- (2) employs a device, scheme, or artifice to defraud a person; or
- (3) engages in an act that operates or would operate as fraud or deceit upon a person;

is liable to the other person, who may bring an action to recover any consideration paid for advice, any loss due to advice, interest at eight percent (8%) each year from the date consideration was paid, costs, and reasonable attorney's fees less the value of cash or property received due to the advice. It is a defense to an action brought for a violation of section 12.1(b) or 26 of this chapter that the person accused of the violation did not know of the violation and, exercising reasonable care, could not have known of the violation.

(d) A person who directly or indirectly controls a person liable under subsection (a), (b), or (c), a partner, officer, or director of the person, a person occupying a similar status or performing similar functions, an employee of a person who materially aids in the conduct creating the liability, and a broker-dealer or agent who materially aids in the conduct are also liable jointly and severally with and to the same extent as the person, unless the person who is liable sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons liable.

(e) A tender specified in this section may be made at any time before entry of judgment.

(f) A cause of action under this statute survives the death of a person who might have been a plaintiff or defendant.

(g) Action under this section shall be commenced within three (3) years after discovery by the person bringing the action of a violation of this chapter, and not afterwards, but in no event may an action, unless the period is extended by operation of IC 34-11-5-1, be commenced more than six (6) years after the purchase or sale of a viatical settlement contract or fractional or pooled interest in a viatical settlement contract that occurred before March 17, 2000, and is the subject of the action. This subsection does not affect a remedy that is available to a person bringing a cause of action under IC 27 or IC 34 or based on common law fraud. No person may sue under this section:

- (1) if that person received a written offer, before suit and at a time when the person owned the security, to refund the

consideration paid together with interest on that amount from the date of payment to the date of repayment, with interest on:

(A) interest-bearing obligations to be computed at the same rate as provided on the security; and

(B) all other securities at the rate of eight percent (8%) per year;

less the amount of any income received on the security, and the person failed to accept the offer within thirty (30) days of its receipt; or

(2) if the person received an offer before suit and at a time when the person did not own the security, unless the person rejected the offer in writing within thirty (30) days of its receipt.

(h) No person who has made or engaged in the performance of a contract in violation of this chapter or a rule or order under this chapter, or who has acquired a purported right under a contract with knowledge of the facts by reason of which its making or performance was in violation, may base a suit on the contract.

(i) A condition, stipulation, or provision binding a person acquiring a security to waive compliance with this chapter or a rule or order under this chapter is void.

(j) The rights and remedies specifically prescribed by this chapter are the only rights and remedies created by this chapter, but are in addition to any other rights or remedies that exist at law or in equity. *(Formerly: Acts 1961, c.333, s.507; Acts 1967, c.255, s.14; Acts 1969, c.190, s.3; Acts 1975, P.L.261, SEC.15.) As amended by P.L.228-1989, SEC.15; P.L.75-1990, SEC.10; P.L.73-2004, SEC.8; P.L.223-2005, SEC.2.*

### **IC 23-2-1-19.5**

#### **Civil penalties**

23-2-1-19.5 Sec. 19.5. (a) If the commissioner determines, after notice and opportunity for a hearing, that any person has violated this chapter, the commissioner may, in addition to or in lieu of all other remedies, impose a civil penalty upon any person who has violated this chapter. This penalty may not exceed ten thousand dollars (\$10,000) for each violation of this chapter found to have been committed. An appeal from the decision of the commissioner imposing a civil penalty under this subsection may be taken by any aggrieved party pursuant to section 20 of this chapter.

(b) The commissioner may bring any action in the circuit or superior court of Marion County to enforce payment of any penalty imposed under subsection (a).

(c) Penalties collected under this section shall be deposited in the securities division enforcement account established under section 15(c) of this chapter.

*As added by P.L.232-1985, SEC.5. Amended by P.L.79-1998, SEC.20; P.L.73-2004, SEC.9.*

### **IC 23-2-1-20**

#### **Appeals from orders of commissioner**

23-2-1-20 Sec. 20. (a) An appeal may be taken by:

- (1) any issuer, investment advisor, or registered broker-dealer upon whose application for registration of an issue of securities may have been granted or denied, from any final order of the commissioner respecting that application or registration;
  - (2) any applicant for registration as a broker-dealer, investment advisor, or agent or any registered broker-dealer, investment advisor, or agent, from any final order of the commissioner affecting the application or registration as a broker-dealer, investment advisor, or agent;
  - (3) any person against whom a civil penalty has been imposed under section 19.5(a) of this chapter, from the final order of the commissioner imposing the civil penalty; or
  - (4) any person who is named a respondent, from any final order issued by the commissioner under section 17.1 of this chapter;
- to the Marion Circuit Court, or to the circuit or superior court of the county wherein the person taking the appeal resides or maintains a place of business.

(b) Within twenty (20) days from the entry of the order, the commissioner shall be served with:

- (1) a written notice of the appeal stating the court to which the appeal will be taken and the grounds upon which a reversal of the final order is sought;
- (2) a demand in writing for a certified transcript of the record and of all papers on file in his office affecting or relating to the order; and
- (3) a bond in the penal sum of five hundred dollars (\$500) to the state of Indiana with sufficient surety to be approved by the commissioner, conditioned upon the faithful prosecution of the appeal to final judgment and the payment of all costs that shall be adjudged against the appellant.

(c) After the commissioner has been served with the items specified in subsection (b), the commissioner shall within ten (10) days make, certify, and deliver to the appellant the transcript, and the appellant shall within five (5) days file the same and a copy of the notice of appeal with the clerk of the court, which notice of appeal shall stand as appellant's complaint, and the commissioner may appear and file any motion or pleading and form the issue. The cause shall be entered on the trial calendar for trial de novo and given precedence over all matters pending in the court.

(d) The court shall receive and consider any pertinent evidence, whether oral or documentary, concerning the order of the commissioner from which the appeal is taken. If the order of the commissioner shall be reversed, the court shall in its mandate specifically direct the commissioner as to his further action in the matter, including the making and entering of any order or orders in connection therewith and the conditions, limitations, or restrictions to be contained. The commissioner is not barred from revoking or altering the order for any proper cause which may thereafter accrue or be discovered. If the order shall be affirmed the appellant is not

barred after thirty (30) days from filing a new application if the application is not otherwise barred or limited. The appeal shall in nowise suspend the operation of the order appealed from during the pendency of the appeal unless upon proper order of the court. An appeal may be taken from the judgment of the court on any appeal on the same terms and conditions as an appeal is taken in civil actions. *(Formerly: Acts 1961, c.333, s.508; Acts 1975, P.L.261, SEC.16.) As amended by P.L.16-1983, SEC.13; P.L.232-1985, SEC.6; P.L.11-1996, SEC.17.*

#### **IC 23-2-1-21**

##### **Construction of chapter in relation to corporation**

23-2-1-21 Sec. 21. Nothing in this chapter shall be construed to relieve corporations from making reports required by law to be made to the secretary of state, or any other state officer, or paying the fees to be paid by corporations. This chapter shall not be construed to repeal any law regulating the organization of corporations in this state, or the admission of any foreign corporation, but the provisions of this chapter shall be construed to be additional to any provisions regulating the organization of a corporation under the laws of this state, or the admission of a foreign corporation to do business in this state.

*(Formerly: Acts 1961, c.333, s.509(a); Acts 1967, c.255, s.12(a).) As amended by P.L.34-1987, SEC.285.*

#### **IC 23-2-1-22**

##### **Repealed**

*(Repealed by Acts 1978, P.L.2, SEC.2325.)*

#### **IC 23-2-1-23**

##### **Repealed**

*(Repealed by Acts 1978, P.L.2, SEC.2325.)*

#### **IC 23-2-1-24**

##### **Administrative orders and procedures**

23-2-1-24 Sec. 24. Except as provided in section 15(b) of this chapter, IC 4-21.5 shall not be applicable to any of the proceedings under this chapter.

*(Formerly: Acts 1961, c.333, s.509(d); Acts 1967, c.255, s.12(d).) As amended by P.L.7-1987, SEC.102.*

#### **IC 23-2-1-25**

##### **Repealed**

*(Repealed by Acts 1978, P.L.2, SEC.2325.)*

#### **IC 23-2-1-26**

##### **Securities advisors**

23-2-1-26 Sec. 26. (a) This section applies to a person engaged in the business of providing advice to others, directly or by means of analyses, reports, or other publications, concerning:

(1) the value of securities; or

(2) the advisability of:

(A) investing in;

(B) purchasing; or

(C) selling;

securities.

(b) A person described in subsection (a) may not:

(1) employ a device, a scheme, or an artifice to defraud a person; or

(2) engage in an act, a practice, or a course of business that operates or would operate as fraud or deceit upon a person.

*As added by P.L.73-2004, SEC.10.*

#### **IC 23-2-1-27**

##### **Administrative actions survive death of respondent**

23-2-1-27 Sec. 27. An administrative action under this chapter survives the death of a person who might have been a respondent.

*As added by P.L.73-2004, SEC.11.*